

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES)

H. J. HEINZ COMPANY (a Corporation),
Appellant,

vs.

MAX M. COHN,
Appellee.

VOLUME II.
(Pages 305 to 640, Inclusive.)

Upon Appeal from the United States District Court for the
Northern District of California, Second Division.

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(Testimony of Julius Regenstein.)

XQ. 186. The extra price would have something to do with their popularity, would it not?

A. The extra price is very small, but I think that the main [333] reason why very few people can use the proposition is because we cannot change the shape of our transparency, and this peculiar shape can be adapted to very few articles only.

XQ. 187. Referring to the Heinz envelope, you employ, do you not, blank envelope stock suitable in strength and texture, don't you? A. I do.

XQ. 188. Is that blank stock what you call semi-transparent? A. Yes.

XQ. 189. A portion of that is, as you have stated, imprinted with a suitable opaque coloring matter to render the body of the envelope opaque?

A. Yes, sir.

XQ. 190. The remaining portion, which is to form the window, I believe you stated is treated by a preparation which has the property of rendering transparent the portion to which it is applied?

A. Yes, sir.

XQ. 191. What sort of an oil do you use in making this transparency? And by asking this question, I am not seeking to delve into your trade secrets.

A. I use an oil.

XQ. 192. What is the general character or base of the oil? A. I do not propose to tell that.

XQ. 193. This oil, I believe you have stated, in effect, is stamped or printed or otherwise applied to the blank to provide the transparency or window of the desired design; that is right, is it not?

(Testimony of Julius Regenstein.)

A. Yes, sir.

XQ. 194. And that, obviously, is applied to such part of the blank where the transparency is desired to appear on the face of the envelope, and it may cover a larger or lesser space, according to the desired size of the transparency or window. That is true, is it not?

A. Our transparency is invariably about of the same size and [334] shape.

XQ. 195. In other words, it is large enough for the name and address written on the inclosure to show through? A. Yes, sir.

XQ. 196. This "oily preparation" which you use, "has a tendency to creep or 'bleed,' " has it not, "beyond the borders of the space imprinted by the stamp or die by which it is applied"?

A. The oil creeps or bleeds more or less in excess of the size of the printing block.

XQ. 197. And the effect of such creeping or bleeding would be, would it not, to "stain or discolor the rest of the envelope or leave a ragged appearance to the window opening"? A. It would.

XQ. 198. And to obliterate such appearance of creep, and give definition to the window opening, is the reason for your placing the border or ring, as you call it, around the window, is it not? A. Yes, sir.

XQ. 199. In answer to Q. 14, you said: "In making the Transo envelope we first in one operation print the inside tint and ring." We are not to understand from that, are we, that you apply the tint and ring on the inside of the envelope?

(Testimony of Julius Regenstein.)

A. When I stated that we printed the tint and the ring in one operation, I meant by that the tint and ring are printed on a rotary press, which has two cylinders; in the same feeding, one cylinder will print the inside, and the other cylinder the ring, in the same manner as a newspaper is printed at the same time on both sides by one operation.

XQ. 200. On which side of your sheet, the tint side or the ring side, do you apply your transparency-forming oil [335] preparation?

A. On the tint side.

XQ. 201. The tint side being the inside of the finished envelope? A. Yes.

XQ. 202. So that, then, in practice, your oily preparation and colored ring "are applied on opposite sides of the blank the preparation on the inside and the coloring on the outside" by coloring meaning the ring? A. Yes.

XQ. 203. When was the first time you ever saw one of Mr. Cohn's one-piece envelopes with the border, if you ever saw one, before 1906, as you have already testified?

A. I did not see one previous to 1905 or 1906, and I believe what I saw at that time was only a part of an envelope.

XQ. 204. Was that the first time you had ever heard of the Cohn inventions?

A. According to my recollection, it was.

XQ. 205. You stated yesterday, in answer to Q. 37, that your company is manufacturing envelopes under the Reese patent 766,902, August 9, 1904.

(Testimony of Julius Regenstein.)

What envelopes did you refer to?

A. Transo envelopes.

XQ. 206. Like the Heinz envelope in suit?

A. Like the Heinz envelopes and others.

XQ. 207. I suppose you are familiar with the Reese patent, are you not? A. I am.

XQ. 208. I show you a copy of the Reese patent, and ask you to point out, if you can, anywhere in that patent anything illustrating or describing an envelope such as is represented by the Heinz envelopes with a border of any sort, and particularly a border in the outline of a symbol of trade, which outline is or is not associated with any printed matter, or any suggestion of such construction as represented in the [336] Heinz envelope, or represented in the regular Transo Stock Envelope with a plain ring or border?

A. The Reese patent does not mention anything as to a border surrounding a transparency, nor does it refer to any border representing a symbol of trade.

XQ. 209. Then, why do you mark the Heinz envelope and the stock envelope with the date of the Reese patent, since I notice on all these envelopes the following: "Pat. Aug. 9, 1904, Transo Paper Co., Chicago"?

A. Because the Heinz and the stock envelopes are made according to the Reese patent.

XQ. 210. In what respect?

A. The Heinz and the stock envelopes are made from blanks in accordance with the patent to George Reese.

XQ. 211. So that in placing this patent date of

(Testimony of Julius Regenstein.)

Aug. 9, 1904, on your envelopes, it is simply calling attention to the fact that the original sheet from which the envelope blank was cut is patented. Is that correct?

A. The envelope blanks from which such envelopes were cut are patented by George Reese.

XQ. 212. I do not think the witness has answered my question. A. Just as I have answered.

By Mr. TOWNSEND.—The question is immaterial, as the claims of the Reese patent are the best evidence as to what the patent covers. I only wanted to know whether the witness believed that the Reese patent is on the envelope itself or on the original sheet.

XQ. 213. Referring to Mr. Banning's letter of December 16, 1903, addressed to you, and which has been read into the record, did you ever act on the suggestion of filing application for patents on the paper and on the envelopes with transparent portions?
[337] A. We told Mr. Banning to proceed.

XQ. 214. What was the nature of the proceedings taken? A. To apply for a patent.

XQ. 215. How many patents?

A. I believe we spoke first of two patents, but Mr. Banning suggested afterwards that only one patent was necessary. I am not sure on this point.

By Mr. BANNING.—Defendant's counsel states that there were two applications filed, through his firm, by George Reese.

XQ. 216. What were these two applications on?

A. I believe one was on a finished transparent en-

(Testimony of Julius Regenstein.)

velope made of one piece of paper; and the other one on the preparation of the blanks from which such one-piece transparent envelopes were to be made.

By Mr. BANNING.—Defendant's counsel states that he has present a certified copy of the Reese application that never resulted in a patent, and that complainant's counsel is at liberty to examine it and make any use of it, in questioning the witness or otherwise, that he may desire.

By Mr. TOWNSEND.—The certified copy referred to by Mr. Banning appears to be that of an abandoned application of George Reese, filed January 15, 1904, Serial No. 189,191, for improvements in Envelopes and Blanks Therefor, assigned one-half to Julius Regenstein, of Chicago, Illinois. This application appears to have been rejected on certain prior patents.

XQ. 217. I show you the copy just referred to, and ask if you are familiar with the descriptive matter, meaning the specification and drawings of the invention, and if you understand the same?

A. I believe I understand this patent. [338]

Adjourned until Saturday, December 3, 1910, ten o'clock A. M.

Chicago, Illinois, December 3, 1910.

Parties met pursuant to adjournment. Present as before.

By the WITNESS.—I wish to make the statement that in my yesterday's testimony I made a mistake in claiming that the Osborne company became a part of the American Colortype Company in 1901. I in-

(Testimony of Julius Regenstein.)

tended to say 1902—March, 1902.

XQ. 218. Referring to this copy of abandoned application, I ask you, Mr. Regenstein, if you find illustrated or described therein any envelope with a border similar to or for the purpose of the ring which you use on your stock envelope or on the Heinz envelope? A. I do not.

XQ. 219. Is there any suggestion of such a construction? A. No.

XQ. 220. The other application of George Reese, which you have referred to and which you say was filed at the same time that this abandoned application was, I presume is the so-called Reese patent, or resulted in the so-called Reese patent of August 9, 1904? A. Yes.

XQ. 221. Both of those applications were filed on January 15th, 1904, is that correct? A. Yes.

XQ. 222. You stated yesterday that you or Mr. Reese, or the two of you together, got up your green border envelope, which you have introduced in evidence as "Defendant's Exhibit January, 1904, Envelope No. 2," in the early part of January, 1904. Will you please state why, in filing these applications, you made no mention in either of them of the use, or desirability of the use, of such a border in getting up a transparent envelope? [339]

A. In November or early in December, 1903, Mr. Reese and I submitted to Mr. Banning an envelope without a border. After we found out from Mr. Banning, either by letter or verbally, that there was a chance of getting a patent, Mr. Reese and I, with

(Testimony of Julius Regenstein.)

the help of our printers, went to work to make transparent envelopes. The reason why I did not mention or speak of the border was on account of the fact that I supposed it was impossible to get a patent on such a simple operation of covering creeping or bleeding by ink—the operation which was performed by me during the many years of my experience and activity in business.

XQ. 223. In other words, you did not consider the border of sufficient importance to make any mention of it in the application or applications which you filed?

A. I did not think it was possible to get a patent on an operation of this kind.

XQ. 224. And for that reason you didn't make any mention of it, or describe it, or claim it, or illustrate it, in either of those applications?

A. I did not pay any attention to the matter whatsoever.

XQ. 225. Will you just describe the exact process, or the method followed, in rendering transparent this envelope with a green border, being the old envelope No. 2, "Defendant's Exhibit of January, 1904," and the imprinting of the border around the window?

A. I gave the pressman of a universal press the sheet of paper and a printing block the shape of the window, and put some oil into the fountain. I asked him to make an impression, and the consequence was the sheet of paper with a transparent part or window. As he handed me the sheet, I noticed at once that the

(Testimony of Julius Regenstein.)

job was imperfect and that the oil which I used ran further than the size of the printing block. I at once decided [340] on printing opaque ink over this imperfection, sent for an engraver, and instructed him to make a border of the size I have before me, of this envelope No. 2. This plate was made very quickly—probably in the course of two hours. I then asked the same pressman to print this plate on the space which I indicated to cover the bleeding. We tried at that time a number of different shades, and after we found that the spreading would show through borders printed with colors being partly made of aniline matters I decided the proper thing to use would be an opaque or covering ink. We had also tried at that time a great many different solutions of oil, as we would have preferred an envelope which would appear clean, but it was impossible for us to find an oil which did not bleed at all. The particular reason for doing away with the border at that time was to do away with this operation of printing, which is rather costly.

XQ. 226. So that, except for the tint that you put on the inside of your stock envelopes and such as is shown on the inside of the Heinz envelopes, the process of making this old January, 1904, No. 2 envelope is substantially the same followed in making your stock and Heinz envelopes to-day. Is that right?

A. With the exception that to-day we print the ring before we apply the oil, and to do the ring printing in place of using a universal press we use a rotary press. The oil was applied at that time on a uni-

(Testimony of Julius Regenstein.)

versal press, and a stock envelope to-day is printed on a cylinder press. At the time the No. 2 envelope was made we prepared only one envelope in one operation. Now in one operation we print twenty-four.

XQ. 227. You had made this envelope and developed this border idea, shown in this old envelope No. 2, before you filed the Reese application referred to, is that right? [341]

A. We made this envelope early in January, 1904.

XQ. 228. Did you ever file any application for patent, in this or any other country, for transparent one-piece envelopes with a border?

A. I did not.

XQ. 229. Did Mr. Reese, or any of your associates, or employees, file such an application, for themselves or for your benefit? A. Not to my knowledge.

XQ. 230. So that you never made any attempt to protect this envelope with a border, by filing any application for a patent, or seeking to obtain patent protection of any sort?

A. I never paid any attention to the border.

XQ. 231. Did you or Mr. Reese ever file any other applications for envelopes showing a transparent window, of any sort, in this or any other country?

A. I do not remember that an application was filed. I remember we spoke at once time with Mr. Banning in regard to a patent for a transparent pay envelope, but I believe I am correct that the matter was dropped.

XQ. 232. Do you recall filing any foreign application for either of the devices shown in the so-called

(Testimony of Julius Regenstein.)

abandoned application for envelopes, or according to the Reese patent of August 9, 1904?

A. I do not remember at this time as to the application in question, but I do know that we filed patents and received patents in England, France, and Canada on the Reese patent.

XQ. 233. By Reese patent, you mean the Reese patent of August 9, 1904, about which you have been talking? A. Yes, sir.

XQ. 234. When did you apply for those patents in Canada, France and Great Britain?

A. I am unable to give the dates without consulting the patent [342] papers.

XQ. 235. Can you state the year in which these foreign patents or any of them were applied for?

A. I presume it was in 1904.

XQ. 236. In the early part or the latter part of 1904?

A. I can give you definite information after I consult the patent papers.

XQ. 237. Can't you approximate the month in which any one of these applications for foreign patents was filed? A. I cannot.

XQ. 238. Can you approximate the date of any one of these patents? A. I cannot.

XQ. 239. Can you state whether any one of those patents was filed before or after you got the U. S. Reese patent of August 9, 1904?

A. I am unable to state whether the patents were applied for previous to or after August 9, 1904.

XQ. 240. Does that answer apply specifically to

(Testimony of Julius Regenstein.)

the Reese patent? In other words, are you unable to state whether you applied for the British patent before or after August 9, 1904?

A. I am speaking of the Reese patent. I am unable to state.

XQ. 241. Do you know whether or not any of those foreign patents discloses or describes the envelope with the border? A. They did not.

XQ. 242. Are you manufacturing under any of those foreign patents to-day?

A. We are manufacturing in the United States only.

XQ. 243. Did you ever manufacture in any of those countries under any of those patents?

A. We have never manufactured in any country but the United [343] States.

XQ. 244. Do you manufacture here in the United States these envelopes for use in any of those foreign countries? A. We do.

XQ. 245. I show you an envelope, Mr. Regenstein, and ask if you know what it is, and, if so, explain the same?

A. This envelope, which you hand me, was manufactured by us in Chicago. and is imprinted in accordance with the wish of our customer as follows: "Cardinal" Series Patented in Great Britain, No. 28,592. This imprint is on the back of the envelope.

XQ. 246. What does the number 28,592 signify?

A. It is the number of the British patent.

XQ. 247. Do you know what year that was?

A. I think 1904.

(Testimony of Julius Regenstein.)

XQ. 248. So this imprint signifies the British patent No. 28,592 of 1904? A. I think of 1904.

XQ. 249. Will you give the date and number and date of application of your Canadian patent?

A. My attorney, Mr. Banning, no doubt can give you that information.

By Mr. BANNING.—On reference to our docket, it appears that George Reese filed an application in Canada December 16, 1904, for a patent on "Paper for Making Envelopes," and that a Canadian patent No. 92,373 was issued to him March 28, 1905.

XQ. 250. Those foreign patents, and the American patent of August 9, 1904, were all identical, were they not?

A. To the best of my knowledge, they were.

By Mr. TOWNSEND.—I will ask that the notary mark the envelope bearing the British imprint, last referred to, as "Complainant's Exhibit 'F' for Identification." This envelope [344] bearing a return address on the face as follows: "From Samuel Jones & Co., London. Makers of Patent Non-curling Gummed Papers," and postmarked London, Jul. 29, '10, and having a canceled one penny stamp.

XQ. 251. When, in your experience, Mr. Regenstein, did it first become known to you that oil or grease on semi-transparent paper would make the spot, on which the grease or oil was placed, transparent? And, in making your answer, I would have you take into consideration your experience as an old printer.

A. I knew that oil would make the paper trans-

(Testimony of Julius Regenstein.)

parent, as long as I can remember.

XQ. 252. You knew that before you took the matter up with Mr. Banning in 1903 and 1904, and before you filed these two applications referred to; is that right?

A. I knew that, although I am not the inventor of the Transo envelope.

XQ. 253. The fact, though, that oil would make paper transparent was of itself notoriously old in the printing art long before that time, wasn't it?

A. I do not think that the making of paper transparent has anything to do with the printing art.

XQ. 254. What was the general knowledge, say, among printers, as to the effect of oil on paper?

A. I do not know, as I never saw one make paper transparent until Mr. Reese, in 1903, made his first tests on a piece of paper.

XQ. 255. Do you mean to say that that was the first time you ever saw a piece of paper made transparent by means of oil, because I understood you to say, in answer to XQ. 251, that you had known that oil would make paper transparent as long as you can remember? [345]

A. That is the first time I ever saw paper made transparent for any practical or commercial purpose. I know since I am a boy that if butter or fat was laid on paper that the paper becomes transparent.

XQ. 256. I understood you to say yesterday that you had spoiled probably fifty millions of envelopes in trying to get a good transparency. During this same period, will you state approximately the num-

(Testimony of Julius Regenstein.)

ber of good envelopes you have got out and marketed?

By Mr. BANNING.—Defendant's counsel objects to any inquiry at this stage of the proceedings looking to the ascertaining of the extent of the business of the witness or the Transo Paper Company, not only on the ground that they are not parties to this suit, which is against the Heinz Company, but also on the ground that the complainant is not entitled to any disclosure at the present time, even of the number of envelopes that have been used by the defendant, much less the number that have been made or used by other parties.

A. I prefer not to answer this question.

XQ. 257. The question was not propounded with the idea of prying into the witness' business, but merely to learn his opinion, based on facts within his knowledge, as to the popularity and success of the Transo envelope; and if the witness feels he can answer that question candidly and without giving specific figures, I will ask him to do so.

A. The Transo envelope is a popular envelope.

XQ. 258. Is it not a fact, and I believe you so stated, that until you put out your Transo envelope, with the border and all complete, and as far as your knowledge is concerned, there was not and never had been a successful one-piece window envelope on the market? [346]

A. I stated that I had never seen a one-piece envelope made in the United States, except my own.

XQ. 259. And your experience I presume has been

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such that you would have known if there were any such envelopes on the market?

A. I believe that is correct.

XQ. 260. How important or essential is the ring around the transparency in the Transo envelope?

A. The ring on a Transo envelope adds in every way to the clean and perfect appearance of the envelope.

XQ. 261. Has appearance anything to do with the practicability or commercial success of the envelope and of such an article as an envelope?

A. The appearance of the envelope is better with a ring, but does not add anything whatsoever to its usefulness; and I would consider the ring to a great extent an ornamental and artistic feature.

XQ. 262. By the usefulness of the envelope, you mean that the envelope will hold an inclosure and also allow the address to show through the window as well without the ring as with it; is that right?

A. The envelope would perform the duties for which it is intended, as well without the ring as with it.

XQ. 263. My previous question as to appearance was directed more particularly as to what effect the appearance had on the success and popularity of the envelope?

A. A clean and artistic looking envelope will always sell more readily than an article which is less clean and artistic.

XQ. 264. In other words, the clean and artistic appearance of the envelope adds to its merchantable-

(Testimony of Julius Regenstein.)

ness; is that right? A. That is correct.

XQ. 265. Do you put out any envelopes without the ring or border? A. We do not. [347]

XQ. 266. You referred yesterday to some correspondence carried on with Mr. Cohn in regard to these inventions here involved, during 1905 or 1906. Can you any more definitely locate now the time when you first heard from Mr. Cohn, in regard to these matters, or heard of Mr. Cohn? A. I cannot.

XQ. 267. The San Francisco fire and earthquake was in April, 1906. If that incident is sufficiently impressed on your mind, can you state whether it was before or after the earthquake when you first heard from Mr. Cohn, or received those specimens or parts of envelopes which you previously referred to?

A. I cannot connect Mr. Cohn's correspondence with the earthquake, but I believe that the letter was received either in 1905 or early in 1906. I have searched for this letter but am unable to find it. I presume it being a matter not affecting the sales department that Mr. Reese must have handled this letter and samples separately.

XQ. 268. Have you preserved any copy or copies of a letter or letters which you wrote to Mr. Cohn at that time, in regard to the proposition?

A. Our copies are made on a loose sheet, and I should say that the copy was kept with the original letter. I have looked for the copy and cannot find any trace whatever.

XQ. 269. You therefore cannot produce either the original letters or copies of your replies?

(Testimony of Julius Regenstein.)

A. I cannot.

XQ. 270. Referring to "Defendant's Exhibit Printed Sheet," showing imperfect work and over-creep of the oil, I will ask you if that is a fair or average specimen of all your work done? [348]

A. It is not an average specimen.

XQ. 271. Can you produce a sheet which gives a fair or average specimen of your work?

A. I have here a sheet which is an average specimen, with the exception of two oil spots appearing in the margin of the paper, which appear on account of careless handling of the sheet by the witness.

By Mr. TOWNSEND.—I will ask the notary to mark the sheet last referred to and handled by the witness, as "Complainant's Exhibit 'G' for Identification."

XQ. 272. Without waiving the previous objections entered to the receipt in evidence of "Defendant's Exhibit Osborne Art Catalogue for 1900," I wish you would pick out in that book, from the printed pictures you referred to, showing the use of a border around the pictures, that picture which to your mind best illustrates the idea or use of a border.

A. I have selected one. It is No. 4453, on page 38, and is entitled "When the Frost is on the Pumpkin and the Fodder's in the Shock," being the calendar of the Continental Building & Loan Association.

XQ. 273. How many colors is that picture printed in?

A. The picture is printed in three colors, and a

(Testimony of Julius Regenstein.)

green olive tint is added at the border or background.

XQ. 274. What are the three colors employed in the picture itself? A. Yellow, red and blue.

XQ. 275. The picture on page 41, numbered 6104, "Playing Hookey," and immediately opposite the Continental Building & Loan Calendar just referred to, is printed in how many colors, Mr. Regenstein?

A. Three colors.

XQ. 276. And what are they?

A. Yellow, red and blue.

XQ. 277. Has this "Playing Hookey" picture any border? [349] A. It has not.

XQ. 278. On page 43 following is picture 4202 of "A Florentine Girl." In how many colors is that picture printed? A. Yellow, red and blue.

XQ. 279. Has that picture a border?

A. It has a gold border.

XQ. 280. Has it a border for the same purpose, in your opinion, that your window envelope has a ring or border?

A. In one sense it has. The green ring on the envelope is ornamental; so is the gold border around this picture ornamental; but it has not served its full purpose, since the careless cutting of the gold plate has diminished the proper effect showing the out of register of three-color printing and a white space which would have been covered if the border was made properly.

XQ. 281. On page 54, the picture of a soldier and a girl in the foreground and of marching troops in the

(Testimony of Julius Regenstein.)

rear, in a gold frame, illustrates, does it not, another instance of imperfect register that you have spoken of? A. It does.

XQ. 282. The same is also true, is it not, of the gold frame shown on page 59?

A. Poor coloring and poor registering.

XQ. 283. And also on page 61?

A. The pictures are particularly poor in the cutting of the plates, but good in registering.

XQ. 284. All these instances of pictures set in gold frames show that the printing plates forming the pictures have not been cut to fit their respective frames.

A. In a way, this statement is correct.

XQ. 285. This loose sheet, 4564, "Off for the Front," is the same picture, is it not, without the gold frame, as shown on [350] page 54, of the "Soldier and the Girl," just referred to?

A. The plates are made from the same original, but of smaller size.

XQ. 286. This smaller plate, 4564, does not show any border, does it? A. It has no border.

Adjourned until Monday, December 5, 1910, ten o'clock, A. M.

Chicago, Illinois, December 6, 1910.

Parties met pursuant to adjournment. Present as before.

XQ. 287. Have you ever put out any Transo envelopes commercially without a ring or border?

A. I have not.

XQ. 288. Have you ceased manufacturing Transo

(Testimony of Julius Regenstein.)

envelopes with a transparent window or ring or border, since the beginning of this suit?

A. I have not.

XQ. 289. You are still actively seeking new business for these envelopes? A. I am.

XQ. 290. When did the actual existence of the two Cohn patents here in suit become first known to you?

A. I first found out about Mr. Cohn when he sent me in either 1905 or 1906 a letter with samples or sketches pertaining to a picture of a cigar and a box of casearets.

XQ. 291. Had the patents been issued at that time, because I am inquiring now more particularly when you first heard of or otherwise became acquainted with the existence of the patents themselves?

A. I can't state when I first heard of or became acquainted with the existence of the patents. It was probably in 1907 or 1908.

XQ. 292. That you first heard of either of the patents?

A. That I first heard of either of the patents.

XQ. 293. Will you please take the specimen of the Heinz [351] envelope, which is a duplicate of "Complainant's Exhibit 'C,' " and I will ask you (reading from the claim of the first Cohn patent 835,850) if that Heinz envelope is not obviously an envelope with an unpunctured face of relatively opaque stock? A. It is.

XQ. 294. And that the Heinz "envelope face has a portion to which a preparation has been applied to render such portion transparent"? That is true, is

(Testimony of Julius Regenstein.)

it not? A. That is true.

XQ. 295. And that said Heinz envelope has "a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock." That is also true, is it not, Mr. Regenstein?

A. Said envelope has a colored border printed around the transparency, in order to beautify the envelope and cover the creeping of the oil.

XQ. 296. I believe you gave the following as the real reason for the use of a border in three-color work: Imperfect registration; varying size of plates; poor feeding to the printing press; and changing in size of the paper on account of atmospheric conditions. That is a correct statement, is it not?

A. It is to a degree. I have also mentioned in my testimony that the borders are printed to complete and beautify the jobs and when such borders are made or engraved that the band or border is deliberately made wider or broader to cover such imperfections.

XQ. 297. Referring to the "Osborne Art Calendar," I call your attention to plate 6732 "Comrades," on part of the page which I have marked page 100, and opposite page 101, and will ask you what the border is for, shown as a black line which I [352] have marked A?

A. This is not a border; this is simply a plain black line, which is in the original half-tone plate. Lines of this sort are as a rule put around a half-tone plate

(Testimony of Julius Regenstein.)

to add to the printing qualities of the plate.

XQ. 298. On page 98, what sort of a plate is 6724, "Little Beggars"? Is not that a half-tone plate?

A. It is.

XQ. 299. That does not appear to have any border line around it, like in plate 6732 last referred to, has it? A. It has not.

XQ. 300. The same is true, practically, is it not, of the half-tone shown on pages 95, 96, 97, 98, 101?

A. Some of the plates in question have no line around them, and some on page 101 have a line.

XQ. 301. What plates on page 101 do you refer to?

A. No. 1273 and 1293. This matter of lines is of little importance, as at times they are not made well and appear broken when printed.

XQ. 302. In determining the existence of these border lines, around these two plates on page 101, you had recourse to the use of a microscope, did you not, in making your selection and distinction?

A. I did. The lines are not printed on account of any ornamental feature. They are simply used to help the printing quality of the plates.

XQ. 303. So that, as far as this line *a* of the plates on pages 100 and 101 is concerned, it bears no analogy to the printing of the ring or border around the Transo envelopes? A. None whatsoever.

XQ. 304. That answer would be equally applicable, would it [353] not, to the presence or use of the embossed border around the picture of Abraham Lincoln, plate 1284, on page 101?

A. The embossed border put around this calendar

(Testimony of Julius Regenstein.)

was to beautify the same and get more money for the same.

XQ. 305. That is true also, is it not, of the frame around the picture on page 26, entitled "On a Point"? A. It is true.

XQ. 306. Isn't that also true of the gold bordered band around the picture of the "Florentine Girl," plate 4202, on page 43?

A. That is true, with the exception that in this instance the engraver should have made his gold plate large enough to cover the imperfections in printing and the poor cutting of the three-color plates.

XQ. 307. The exception, though, indicates the thing he didn't do, doesn't it? That is, this gold border in the Florentine picture does not cover up the so-called imperfections?

A. It does not properly cover the so-called imperfections.

Redirect Examination.

(By Mr. BANNING.)

RDQ. 308. I will ask you to look at the certified copy of this abandoned Reese application, filed January 15, 1904, and to state what the date of the signing of such application by Reese appears to be.

A. "Signed at Chicago, in the County of Cook, and State of Illinois, this second day of January, 1904."

RDQ. 309. In giving your last answer, you read from the certified copy of the petition of such application, I believe?

That is objected to, as the paper is the best evidence of its contents.

(Testimony of Julius Regenstein.)

A. I did.

RDQ. 310. I show you the oath in this certified copy of the [354] Reese abandoned application, and ask you to read into your answer the jurat, or statement by the notary.

Same objection; but I would say that I have no objection of counsel introducing the entire paper in evidence.

By Mr. BANNING.—Defendant's counsel states that all he desires is to show the date when the petition and oath were signed and made, and that he has no desire to cumber the record by introducing the entire certified copy; but that if complainant's counsel desires to produce it as an exhibit on the part of complainant he is at liberty to do so. Furthermore, counsel calls attention to the fact that a number of questions have been asked as to what this certified copy showed or did not show, so that he submits that the question is proper for the purpose for which it is asked, and is in accordance with the precedents set by counsel himself.

By Mr. TOWNSEND.—Acting on the suggestion of counsel for defendant, counsel for complainant offers in evidence the certified copy of the abandoned application referred to, and asks that it be marked "Complainant's Exhibit 'H' for Identification." The objection to the last two questions are therefore withdrawn, on the grounds stated; but objection is entered on the grounds that the questions are immaterial and incompetent.

A. "Sworn to and subscribed before me this second

(Testimony of Julius Regenstein.)

day of January, A. D., 1904. Oscar W. Bond, Notary Public, (Notarial Seal)."

RDQ. 311. I believe, in answer to some of the questions asked on cross-examination, you stated something about the undesirability of making special designs, such, for instance, as that on the envelope showing a border in the form of a cigar, for Stickney & Company, as a reason why you did not specially care for that kind of work. Please state a little [355] more fully in reference to this.

A. I stated that we did not care much for special work of this sort, since the changing of the form from regular ring plates to, for instance, cigar plates, occupies considerable time. This work is done on a rotary machine, which has a daily output of forty thousand sheets 29x54 inches. The changing of such plates will occupy at times three and four hours, and, therefore, will cut our daily output down very considerably. In fact, this loss, on account of stopping the machine and changing the plates, is much greater than the extra money we can get for envelopes with special borders. If we would ask what they are really worth, the envelopes would be uncommercial, as no one would be willing to pay such prices.

By Mr. TOWNSEND.—I move to strike out the last sentence beginning, "If we would ask," etc., as not being responsive to the question and as being the mere statement of the witness, and inconsistent with the acts of the witness and his company.

RDQ. 312. As I recall, there was some strike or difficulty some years ago, here in Chicago, with the

(Testimony of Julius Regenstein.)

Franklin Union No. 4, if I have the name right. Do you recall any difficulty at that time?

Objected to as leading, and as irrelevant and immaterial.

A. I recall the facts, that the company with which I was connected, called the "American Colortype Company," was in trouble with the Franklin Union; a strike was declared at our shop along in March, 1904, and we had considerable trouble; our men were sluggish and injured to a great extent, and we were obliged, in April, 1904, to go before the United States Courts and ask for an injunction to restrain the [356] Franklin Union and others from interfering with our business and our health.

By Mr. BANNING.—Defendant's counsel states that he has procured a certified copy of the injunction or restraining order referred to by the witness to definitely fix the date of the same, and that for that purpose he offers the certified copy referred to, in evidence, and that the same shows it was entered April 4, 1904. He asks that the copy be marked "Defendant's Exhibit Strike Restraining Order, April 4, 1904."

By Mr. TOWNSEND.—The receipt in evidence of the exhibit last referred to is objected to as irrelevant and immaterial to any of the issues in the present case.

By Mr. BANNING.—For convenience, it is agreed that a copy of the restraining order may be made by the notary, and inserted to follow this deposition, in place of the original.

(Testimony of Julius Regenstein.)

Recross-examination.

(By Mr. TOWNSEND.)

RXQ. 313. I show you a letter, Mr. Regenstein, on the Transo Paper Company's letter-head, dated September 22, 1910, and addressed to "Gabriel Meyerfeld Co., 311 Battery St., San Francisco, Calif.," and ask if you know the signature to that letter?

A. I do.

RXQ. 314. Whose signature is it?

A. The letter is signed by Mr. Horace Anderton.

RXQ. 315. Who is Mr. Anderton?

A. He is an employee of our company.

RXQ. 315. That is on your regular letter-head, is it not? A. It is.

RXQ. 316. And that letter was written and signed by Mr. Anderton on behalf of the company, was it not? [357] A. It was.

By Mr. TOWNSEND.—I will ask the notary to please mark the letter as "Complainant's Exhibit 'I' for Identification."

Redirect Examination.

(By Mr. BANNING.)

RDQ. 317. Mr. Regenstein, I will ask you to read the letter into this answer to the question about which complainant's counsel has inquired in the last two questions:

A. The letter reads as follows:

(Testimony of Julius Regenstein.)

[Complainant's Exhibit "I" for Identification.]

"TRANSO PAPER COMPANY.

Chicago, Illinois, Sept. 22, 1910.

Gabriel Meyerfeld Co.,

311 Battery St.,

San Francisco, Calif.

Dear Sirs:—

We have your favor of the 14th inst., referring to notice received from Max M. Cohn with reference to suit pending against H. J. Heinz Co., as users of Transo Envelopes.

This party holds a worthless patent, which he has tried to compel us to buy, but for which we have no use. We are fighting the case for H. J. Heinz Co., and there is no doubt but what we will be able to prove our contention in the matter. In the meantime, you are perfectly safe in continuing to use our envelope, as we will protect you against any possible action on the part of Cohn.

We are sending you a further letter to this effect today from our patent attorneys, Messrs. Banning & Banning.

Yours very truly,

TRANSO PAPER CO.

Per HORACE ANDERTON." [358]

HA. ER.

RDQ. 318. I infer from this letter that Gabriel Meyerfeld Co. had written to your company in reference to notice received from Mr. Cohn about the pendency of this suit. Is that the case?

A. I presume that is the case.

(Testimony of Julius Regenstein.)

RDQ. 319. Please state the fact, whatever it may be, as to whether many of your customers have received notices or letters from Mr. Cohn, threatening suits under the patent sued on herein, if you know.

A. I believe that a great bulk of our customers have received such notices as you mentioned, which have the appearance of an official document, with a large headline of warning, and this circular caused a great many customers to write us letters to the effect saying that they were warned by the Circuit Court of California to discontinue the use of the Transo envelopes.

RDQ. 320. Do you mean that the form and style of the notice was such as to be calculated to create the impression that it emanated from the Court?

By Mr. TOWNSEND.—The question is objected to as calling for the opinion of the witness, being hearsay, and that the circular itself is the best evidence of its contents. Counsel for complainant has a copy of said notice or circular, and if counsel for defendant wishes to use it or introduce it in evidence he is welcome to it.

A. It was.

RDQ. 321. I show you this "Warning" which complainant's counsel has just handed me, in accordance with his suggestion above, and ask you whether it is like the "warnings" that have been sent to you from your customers as having been received by them?

A. It is the same. [359]

RDQ. 322. You may state, generally, about how many of your customers have written you that they

(Testimony of Julius Regenstein.)

have received notices or warnings from Mr. Cohn.

A. Our office has received at least three hundred, and our branch offices are reporting that they have also received a great many.

RDQ. 323. Do you know how Mr. Cohn got the names and addresses of your customers, to send them these notices or warnings? A. I do not know.

RDQ. 324. I notice this letter to the Gabriel Meyerfeld Co., in speaking of Cohn says: "This party holds a worthless patent." Was that statement an expression of your honest opinion as to the Cohn patent?

A. Regardless of this letter, which is not signed by me personally, I say that I consider the Cohn patent worthless.

RDQ. 325. If you see any further or other statements in this letter about which you may desire to make any comment, please do so.

A. In this letter appears the statement: "which he has tried to compel us to buy." I should say that this statement is not absolutely correct, since Mr. Cohn at no time has tried to "compel" us to buy his patents. The writer and signer of this letter does know I believe that in 1909, or about that time, a Mr. Callahan wrote us a letter, from some part of California, in which he claimed that he had an option on the Cohn patents and offered the same to us for sale.

RDQ. 326. Did you at the time have knowledge of the letter from Mr. Callahan? A. I did.

RDQ. 327. Do you remember Callahan's full

(Testimony of Julius Regenstein.)

name? A. I do not.

RDQ. 328. Do you know whether that letter from Callahan is [360] still in existence?

A. I came across a letter from Callahan the other day in looking over my private papers, but I do not know at this time whether this letter is the letter in which he made this offer or whether it is a subsequent letter.

By Mr. BANNING.—Defendant's counsel offers in evidence the warning notice referred to in the above questions and answers, and asks that the same be marked "Defendant's Exhibit Cohn Warning."

Recross-examination.

(By Mr. TOWNSEND.)

RXQ. 329. In the letter of Gabriel Meyerfeld Co. to you, and to which your letter of September 22, 1910, Complainant's Exhibit "1" for Identification, is an answer, did the letter say that they had been warned by the Circuit Court of California to discontinue the use of Transo envelopes?

A. I suppose that letter is in our files. I have never seen the letter, and therefore do not know to what this letter refers.

RXQ. 330. Did you send such a letter as this, Complainant's Exhibit "1" for Identification, to all of your customers who complained that they had received these warning notices, or is this the only letter of this sort that you have written in such cases?

A. We send out all kinds of letters.

RXQ. 331. What do you mean by that, as your

(Testimony of Julius Regenstein.)

answer does not seem to be in response to my question?

A. I mean by that that we have no special form—that we send out all kinds of letters.

RXQ. 332. I was not thinking so much of the form as of the substance, and I will ask you if you have written all these various complaining customers, or any substantial number of [361] them, to the effect that the Cohn patent was worthless; that Cohn had tried to sell you the patent; that you had no use for the same; and that they—the customers—would be perfectly safe in continuing to use Transo envelopes; and that you would protect them against any possible action on the part of Mr. Cohn?

A. I am unable to tell you just what we said in the various great many letters, but I feel satisfied that we said enough.

RXQ. 333. In answer to RDQ. 324, you said that, regardless of the letter to Gabriel Meyerfeld Co., you “consider the Cohn patent worthless.” Which patent do you refer to; or do you include both of the patents in suit in the estimate which you have made?

A. In the first place, I said in my answer distinctly patents, and I consider both of them worthless.

RXQ. 334. Who is this man Callahan, that you have referred to as trying, in 1909, to sell you the Cohn patents?

A. I believe I met him several years ago in Chicago.

RXQ. 335. Is it the same Callahan referred to in the letter of Messrs. Banning & Banning of December

(Testimony of Julius Regenstein.)

16, 1903, and as having a patent dated June 10, 1902?

A. It is not. He is the brother of the said Callahan.

Chicago, Illinois, December 7, 1910.

Redirect Examination.

(By Mr. BANNING.)

RDQ. 336. Since the last question was asked you, your deposition was interrupted to permit the examination of the witnesses, Sauerman, Wein, and Olson, I believe? A. Yes, sir.

RDQ. 337. Referring to the "Defendant's Exhibit Cohn Warning," please state whether duplicates of such warning have been [362] sent you by any of your customers. A. A great many.

RDQ. 338. If you have here present any letter received by your company from a customer, referring to the receipt of such a warning notice, I will ask you to produce it and read it into your answer.

A. I have in my hand a letter received by the Transo Paper Company, from Palm Bros. & Company, Cincinnati, Ohio, dated September 10, 1910, which reads as follows (omitting the printed heading):

[Defendant's Exhibit Palm Bros. Letter (Offered).]

"Cincinnati, O., U. S. A., Sept. 10, '10.

Transo Paper Co.,

Chicago, Ill.

Gentlemen:—

We are in receipt of a notice from San Francisco, signed by Max M. Cohn, which purports to be a notice from United States Circuit Court in and for

(Testimony of Julius Regenstein.)

the Northern District of California, and this is a notice of suit entered by Max M. Cohn, plaintiff, v. H. J. Heinz Co., respondent. This suit is for an infringement by the respondent of letters patent on envelopes, which the plaintiff claimed were used illegally by the respondent. These envelopes were supposed to be manufactured and sold by your company. This notice also states that everyone who makes, sells, or uses a similar device is liable to suit for damage. We have been using envelopes manufactured by your company, but in view of having received this notice we have discontinued their use. We will be pleased to hear from you as to the meaning of this notice. We have quite a quantity of your envelopes on hand and have found them very satisfactory, but we do not wish to render ourselves liable to damages for using them. [363]

Yours very truly,

THE PALM BROTHERS COMPANY,

GL/BK.

Per GEO. G. LUDWIG."

By Mr. BANNING.—Defendant's counsel offers in evidence the letter produced by the witness and read above, and asks to have the same marked "Defendant's Exhibit Palm Brothers' Letter."

RDQ. 339. You may state what the fact may be as to the effect upon your customers and your business, the sending out of these Cohn warnings by the complainant has had.

The question is objected to as irrelevant and immaterial; as any effect that such notice may have had, favorably or unfavorably to the witness, would be no defense.

(Testimony of Julius Regenstein.)

A. It is very difficult for me to state the extent of our damages. I know of a number of instances where we have lost large customers and smaller ones, and no doubt a great many customers, probably all of our customers, have received the Cohn warning notices, and in a great many instances the same were not returned to us, and we find since we miss a great many re-orders that our customers must have bought other goods. A great number of our customers continue to do business with us, and in many instances they claim that they did not propose to be bluffed by a shady proposition of this sort.

RDQ. 340. From your knowledge of Mr. Cohn's business, what do you say as to his being in a position to furnish the envelopes to your customers, which he has thus scared away?

Objected to as irrelevant and immaterial; and calling for the self-serving opinion of the witness, and in any event the information that may be elicited by the question is no defense.

A. According to my knowledge, Cohn is not in a position to [364] make or furnish one-piece transparent envelopes; nor have I ever seen a one-piece envelope made or put on the market by Mr. Cohn. I dare say, if such envelopes made by Mr. Cohn were on the market, I dare say that on account of the numerous connections I have some one connected with our business would have seen same and submit it to me.

RDQ. 341. I believe you were asked on cross-examination as to whether or not your Transo envelopes

(Testimony of Julius Regenstein.)

had the oil applied on one side of the paper and the border applied on the other side. How was it with these old January, 1904, envelopes in evidence?

A. Our 1904 experiments stood for an envelope where the ink representing the border was printed on the same side where the oil was put.

RDQ. 342. And that is true of these January, 1904, envelopes in evidence, is it? A. It is.

RDQ. 343. Are the witnesses, Sauerman, Wein, and Olson, who have given their depositions for the defendant, stockholders in the Transo company, or financially interested in the outcome of this litigation?

A. The witnesses in question are in no way financially interested in the business of the Transo Paper Company.

RDQ. 344. Is the Transo Paper Company engaged exclusively in the manufacture and sale of these Transo envelopes? A. Yes, exclusively.

RDQ. 345. About how many hands or employees does the company have, engaged in the work of making and selling these Transo envelopes?

A. About 120.

RDQ. 346. About what investment does your company have in its plant, machinery, stock, etc., for the carrying on of the [365] business of manufacturing and selling these Transo envelopes?

A. Our entire investment is about \$150,000.00.

RDQ. 347. To what extent is your own personal time devoted to the business; and, in answering, you may cover the time since you began work with Mr.

(Testimony of Julius Regenstein.)

Reese to the present time?

A. For one year I was connected with the American Colortype Company, but the last six years, ending February, 1911, I gave almost exclusively to the promotion of the Transo envelope.

RDQ. 348. Referring again to these old 1904 envelopes in evidence, I will ask you to state why you preserved them, and how you are able to know that these envelopes in evidence are some that you preserved?

A. I preserved said envelopes because they were the first attempt I made. I wanted to keep them and kept them at home to have them before me, as I generally do with all things which I put out or help put out.

RDQ. 349. Until you brought them to our office for use as evidence in this case, in whose possession have they been since they were made?

A. They were in my exclusive possession.

Recross-examination.

(By Mr. TOWNSEND.)

RXQ. 350. How long has the Transo Paper Company been in business?

A. Since the early part of 1905, as a corporation.

RXQ. 351. How many of these letters, similar to the Palm Brothers letter, have you received from your customers?

A. We have received quite a few; and I dare say that the Palm Brothers letter is a very mild one.

(Testimony of Julius Regenstein.)

Redirect Examination.

(By Mr. BANNING.)

RDQ. 352. I omitted to ask you if you had found the letter [366] from our firm to you, dated December 16, 1903, which was referred to in your testimony the other day?

A. I have looked very carefully over our files several times, but cannot find the original. At the time this letter was received, I was still connected with the American Colortype Company, and Mr. Reese as the patentee handled details of this sort. Mr. Reese kept some of the correspondence at home, since we had no office, and since Mr. Reese is dead I would not know how to proceed to get this original letter.

JULIUS REGENSTEIN. [367]

[Restraining Order in American Colortype Co. vs.
Franklin Union No. 4 et al.]

*In the Circuit Court of the United States, Northern
District of Illinois, Eastern Division.*

Present: Honorable CHRISTIAN C. KOHLSAAT,
Circuit Judge.

Monday, April 4, 1904.

No. 27,168.

THE AMERICAN COLORTYPE COMPANY

vs.

FRANKLIN UNION No. 4 et al.

The complainant having entered its motion for the issuance of a temporary injunction herein in accord-

ance with the prayer of the bill, and the Court having considered said bill and the affidavits in connection therewith, and it satisfactorily appearing to the Court that a proper case is made for the issuance of a restraining order against the defendants pending the hearing of the motion for said injunction,

IT IS ORDERED, that the defendants, Franklin Union No. 4, Charles F. Woerner, and J. M. Shea, who are respectively President and Secretary of said Franklin Union No. 4, Michael Flannery, Norman Stuart, Charles Greene, Maurice Sanger, Andrew Carlson, Harry Gersie, C. Groves, C. Fisher, Fred Becker, M. Jannette, I. Renke, A. Berggren, Max Riggert, J. M. De La Barra, Eugene Hauck, Nick Streidt, Al. Wennesten, Arthur Geng, E. Manz, A. Berg, R. Manfield, G. Greene, Max Krouse, Seymour Symers, C. Blank, Steve Mack, Charles Kunz, Paul Viehwig, Aug. Gauer, R. W. Miller, Ed. Matson, F. Bodemer, H. Bartling, Christ Senn, Leon Stapleford, A. W. Davis, Carl Andrews, and A. Blanford, and each of them, and the persons aiding or abetting or confederating with them with reference to the matters herein enjoined, be, and they are hereby, restrained and enjoined until the hearing of said motion and until the further order of the court herein, [368] from in any manner interfering with, hindering, obstructing or stopping the business of said American Colortype Company, or its agents, servants, or employees, or in the operation of its business aforesaid. And also from entering upon the premises of the American Colortype Company

for the purpose of interfering with, hindering or obstructing it in any manner; and also from compelling or inducing or attempting to compel or induce, by threats, intimidation, unlawful persuasion, force or violence, any of the employees of the American Colortype to fail or refuse to work for it or to leave its employ; and also from preventing, or attempting to prevent, any person or persons, by threats, intimidation, force, violence, unlawful persuasion, from freely entering into the service, or continuing in the service, of the American Colortype Company; and also from doing any acts whatever in furtherance of any conspiracy or combination to obstruct the business of the American Colortype Company or any of its officers or employees; and also from congregating or being upon or about the premises of the American Colortype Company or the streets and approaches or places adjacent thereto, for the purpose of intimidating its employees or preventing or hindering them from fulfilling their duties as such employees, or of inducing or coercing by threats, violence or unlawful persuasion any of the employees of the American Colortype Company to leave its service, or of interfering with it in any manner in the carrying on of the business in the usual and ordinary way, or in any way interfering with or molesting any person who may be employed by, or seeking employment with, the American Colortype Company in the operation of its business; and also from collecting about the approaches of the place of business of the American Colortype Company for the purpose of picketing or patrolling its premises or

the approaches thereto for the purpose of intimidating, threatening, coercing or unlawfully persuading any of the employees of the American Colortype [369] Company or persons seeking employment with it, and from interfering with its employees in going to and from their work, and from going either singly or collectively to the homes of any of the employees of the American Colortype Company, for the purpose of intimidating, threatening or unlawfully persuading them to leave its service, and from intimidating or threatening the wives and families of its employees for that purpose.

IT IS FURTHER ORDERED that the complainant file an injunction bond herein payable to the defendants, in the penal sum of Five Hundred Dollars, with surety to be approved by the Clerk of the Court. And it is further ordered that the hearing of the motion for an injunction herein be, and it is, set down for hearing for the 18th day of April, 1904, at the opening of court on that day, or as soon thereafter as counsel can be heard.

(Here follows the certificate of the Clerk.)

Northern District of Illinois,
Eastern Division,—ss.

I, JOHN H. R. JAMAR, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the order entered of record in said court on the 4th day of April, A. D. 1904, in the cause wherein The American Colortype Company is the complainant, and Franklin Union No. 4, et al., are the defendants, as

the same appears from the original records and files thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and [370] affixed the seal of said court at my office in Chicago, in said District, this 5th day of December, A. D. 1910.

[Seal] (Signed) JOHN H. R. JAMAR,
Clerk. [371]

[Testimony of Ernest W. Sauerman, for Defendant.]

ERNEST W. SAUERMAN, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. Please state your name, age, residence, and occupation.

A. Ernest W. Sauerman; age, 30; residence, 2038 N. 42d Avenue, Chicago, Illinois; printing-press man.

Q. 2. Are you acquainted with Mr. Regenstein here? A. I am.

Q. 3. How long have you known him or been associated in any way with him in business?

A. About thirteen years.

Q. 4. What concern are you working for now?

A. Transo Paper Company.

Q. 5. What are your duties with that company?

A. Superintendent.

Q. 6. How long have you worked for the Transo Paper Company?

A. Ever since it's been in existence.

Q. 7. Before the Transo Paper Company was organized, who were you working for?

(Testimony of Ernest W. Sauerman.)

A. The American Colortype.

Q. 8. How long had you been working for that company? A. About seven years.

Q. 9. What were your duties with that company?

A. A proofer.

Q. 10. What are the duties or work of a proofer?

A. To prove up three-color plates.

Q. 11. Did you ever have anything to do with one-piece transparent window envelopes? A. I did.

Q. 12. Tell us the first connection you had with that kind of envelopes.

A. I remember Mr. Regenstein and Mr. Reese coming to me with some paper and oil and asked me to take an impression of the oil on the paper. [372]

Q. 13. Did you do the work for them?

A. I did.

Q. 14. What did they do with the paper after you had applied the oil, if you know?

A. We found that upon applying the oil to the paper it crawled or spread; so we made a ring plate and printed it on the paper.

Q. 15. What did you print it on the paper for?

A. To cover up the unevenness of the oil.

Q. 16. After the ring had been made and the printing done, as you have explained, what was done with the paper, if you know? A. I do not know.

Q. 17. Who was the pressman or feeder on the machine, if you remember? A. Myself.

Q. 18. After you had printed the paper with the oil and with the ring or border, did you afterwards see any envelopes in which such parts appeared?

By Mr. TOWNSEND.—Objected to as leading.

(Testimony of Ernest W. Sauerman.)

A. You refer to the window with the ring around it?

Q. 19. Yes, that is what I mean. Did you see any envelopes with the transparent window and the ring around it, that you had printed? A. I did.

Q. 20. If you remember, please tell us what kind of ink was used to print the ring around the transparent portion?

A. You refer to the color of the ink or the consistency of the ink?

Q. 21. To the color.

A. We printed them—or rather I printed them—in a good many colors.

Q. 22. If you remember any objection that was found to the ring for printing the colors around the transparent window, please tell us what it was.

A. I don't quite understand the question.

Q. 23. You are familiar with the size and width of the ring [373] that is used by the Transo Company at the present time, in printing their Transo envelopes, are you? A. I am.

Q. 24. How did the first ring that was used for printing around the transparent part, compare with the present ring in width, if you remember?

By Mr. TOWNSEND.—The question is objected to as leading, and for lack of proper foundation.

A. It was narrower.

Q. 25. When, if you can tell us, did you first see envelopes made up out of the paper that you had printed with the oil and with rings or borders around the transparent portion or window?

(Testimony of Ernest W. Sauerman.)

By Mr. TOWNSEND.—Objected to as incompetent, immaterial, and no proper foundation laid.

A. I can't remember the exact date.

Q. 26. State about when it was, as near as you can.

A. I assume it was shortly after I printed the paper. In fact I cut some out by hand and folded them myself.

Q. 27. When would you say that you did this work of cutting out and folding the envelopes yourself, giving, as nearly as you can, the year and the month?

Objected to as irrelevant, incompetent and immaterial.

A. The first part of January, 1904.

Q. 28. At that time, did you belong to any Union, and, if so, what?

Objected to as leading, and furthermore as irrelevant and immaterial.

A. I belonged to the Franklin Union at that time.

Q. 29. Do you remember when you applied for membership in the Chicago Printing Pressman's Union, if you ever did?

Same objection. [374]

A. In January, 1904.

Q. 30. When were you initiated into that Union, if you remember?

Same objection.

A. I believe it was in April, 1904.

Q. 31. Why was there so much delay, if there was any unusual delay, between your application and your initiation?

Objected to as irrelevant and immaterial.

(Testimony of Ernest W. Sauerman.)

A. For some reason or another, we were not accepted by the Printing Pressmen's Union at their regular meetings as we should have, and for that reason were not initiated until April, 1904.

Q. 32. Do you remember anything about the strike involving the Franklin Union No. 4?

Same objection.

A. There was a strike declared about the first of April.

Q. 33. Mr. Sauerman, do you own a house here in Chicago? A. I do.

Q. 34. Please look at this paper, purporting to be a trust deed, and see by whom it is signed?

A. It is signed by myself.

Q. 35. What is the date of that trust deed?

By Mr. TOWNSEND.—This line of examination is objected to as irrelevant and immaterial to any of the issues involved in this case.

A. The 27th day of April, 1904.

Q. 36. I see pinned to this trust deed a paid and canceled promissory note for seven hundred fifty dollars. Please look at it and tell us whose name is signed to that note.

Same objection.

A. It is my own.

Q. 37. What is the date of that note? [375]

A. April 27, 1904.

Q. 38. What were this note and trust deed that you have identified given for?

Same objection.

A. For the purchase of my house.

(Testimony of Ernest W. Sauerman.)

Q. 39. When did you purchase your house for which the note and trust deed were given?

A. That was the day when I closed up the deal, as shown on these papers.

Q. 40. April 27, 1904? A. Yes, sir.

Q. 41. I see the note and trust deed are marked as paid and canceled, from which I infer that you paid your debt, is that correct? A. It is.

Q. 42. Mr. Sauerman, are you a married man?

A. I am.

Q. 43. Have you any children? A. I have.

Q. 44. When were they born?

A. My oldest boy was born the 27th of March, 1904.

Q. 45. How did this strike, that we have mentioned before, affect you, so far as being at home at or about the time your boy was born?

Same objection previously entered to this line of examination.

A. The boy was born a couple of days before the strike was declared, and I was not able to go home for about four or five nights, and used to send a friend to calm my wife, she being in bed.

Q. 46. Do you mean to allay her fears for your safety, or something of that sort?

A. That was the very reason.

Q. 47. Now, we have been talking about several dates—your application for membership in the Printing Pressmen's Union—the time you purchased your home—the birth of your child—the existence of the strike. With those dates in mind, I will ask you to state whether it was before such dates or [376]

(Testimony of Ernest W. Sauerman.)

after them that you assisted in making those first envelopes with the ring or border around the transparent portion, as you have explained.

The question is objected to as leading.

A. Before.

Q. 48. Do you think you would recognize any of those first envelopes that were made, with the ring or border, that we have been talking about?

A. I can.

Q. 49. I show you two envelopes, and ask you to examine them and tell us what they are.

A. I printed them myself.

Q. 50. Do you mean that these two envelopes that I have shown you were some of those that you printed, with the rings or borders, as you have explained? A. They are.

Q. 51. The envelopes that I have shown you are the ones that have been offered in evidence in the deposition of Mr. Regenstein, and are marked "Defendant's Exhibit January, 1904, Envelop No. 1," and "Defendant's Exhibit January, 1904, Envelope No. 2," are they not? A. They are.

Cross-examination.

(By Mr. TOWNSEND.)

By Mr. TOWNSEND.—I move that all of the witness' deposition which he has just given, beginning with Q. 28, page 118, and following, to and inclusive of Q. 48, page 122, be struck out, on the grounds that all of such testimony as might be deemed material is based on and elicited by leading questions, and that

(Testimony of Ernest W. Sauerman.)

all the rest of the testimony is irrelevant and immaterial.

Q. 52. Not waiving any of the objections previously made, I will ask you, Mr. Sauerman, who suggested originally— [377] yourself, Mr. Reese, or Mr. Regenstein—the idea of printing a border around the transparent window to cover up the creep of the oil? A. I believe Mr. Regenstein did.

ERNST W. SAUERMAN.

Adjourned until Tuesday, December 6, 1910, ten o'clock A. M. [378]

Chicago, Illinois, December 6, 1910.

Parties met pursuant to adjournment. Present as before.

[Testimony of Joseph Wien, for Defendant.]

JOSEPH WIEN, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence and occupation.

A. Joseph Wien; age, 33; 1366 S. Morgan Street, Chicago, Illinois; with the Regensteiner Colortype Company.

Q. 2. How long have you known Mr. Julius Regenstein? A. About fifteen years.

Q. 3. Have you ever worked under him?

A. I have.

Q. 4. For about how long?

A. For about ten years.

(Testimony of Joseph Wien.)

Q. 5. What were your duties or what were you doing? A. I was proofing.

Q. 6. What do you mean by proofing?

A. After the engraver gets through with the plates, we prove them up and see what the results of the plates are.

Q. 7. You know what Transo envelopes are, do you? A. Yes, sir.

Q. 8. When did you first know of work being done on one-piece transparent window envelopes?

Objected to as leading, and no proper foundation laid.

A. In about January, 1904.

Q. 9. Who was working on that kind of envelopes?

A. Ernest Sauerman.

Q. 10. What was he doing?

Objected to as irrelevant and immaterial.

A. He was putting oil on the envelopes.

Q. 11. What kind of a press was he using?

A. Universal.

Q. 12. Was that at Mr. Regenstein's place?

A. Yes, sir.

Q. 13. Tell us, as far as you remember, what was done by Mr. Sauerman. [379]

Objected to as irrelevant and immaterial, and no proper foundation laid.

A. Why, Mr. Sauerman was putting oil on the envelope.

Q. 14. On the envelope, or on the paper, which do you mean? A. On the paper.

Q. 15. You may tell us whether you saw Mr.

(Testimony of Joseph Wien.)

Regenstein there during those operations.

A. Mr. Regenstein was there during the operations.

Q. 16. When did you first see, if you did see, a ring or border printed around the transparent portion formed by the oil?

Objected to as leading.

A. On the same day that the oil was put on the envelope. In January, 1904.

Q. 17. If there is any circumstance that enables you to fix the date as January, 1904, please mention such circumstance. A. About January 15, 1904.

Q. 18. What circumstances enables you to name that date as about the time when you saw the paper with the oil and ring applied to it?

A. At that time we made application for the Pressmen's Union, which was about January 15, 1904.

Q. 19. Who do you mean by "we"?

A. Mr. Sauerman, myself, and several others who were in there at that time.

Q. 20. What caused you and the others to apply for membership in the Pressmen's Union?

Objected to as irrelevant and immaterial.

A. The cause of that was promotion from the Feeders' Union to the Pressmen's Union. One was recognized as a Feeders' Union only, and the other was recognized as a Pressmen's Union only.

Q. 21. Did any one object to your doing press work while [380] belonging simply to the Feeders' Union?

Same objection.

(Testimony of Joseph Wien.)

A. Not exactly, but the time was ripe that that department had to go into the Pressmen's Union.

Q. 22. Did you yourself personally do any work, printing or otherwise, on these one-piece transparent window envelopes, or the paper for making them?

A. I did.

Q. 23. What was that work?

A. I printed the oil on the paper, and later in the afternoon I printed the border around the window.

Q. 24. How did it happen that you as well as Mr. Sauerman did that kind of printing on the paper?

A. Mr. Sauerman was working on the universal press, and he didn't have any experience on the cylinders at that time. Mr. Regenstein asked me to print that on the cylinder for him, which I done.

Q. 25. When, if at any time, did you see any envelopes made up out of the paper, that you or Mr. Sauerman had printed with the oil and ring, as you have explained? A. That was in January, 1904.

Q. 26. You have referred to your application for membership in the Pressmen's Union as being made about January 15, 1904. Was it before or about at the time of your application that you saw these envelopes?

Objected to as leading, and suggestive of the desired answer.

Mr. BANNING.—Question withdrawn.

Q. 27. You have referred to your application for membership to the Pressmen's Union as having been made about the middle of January, 1904. When, with reference to that time, would you [381] say

(Testimony of Joseph Wien.)

that you saw envelopes with the transparent windows and the rings around the windows, made out of paper printed by yourself, or Mr. Sauerman?

Objected to as leading in the extreme and suggestive of the desired answer.

A. In about January, 1904.

Q. 28. Before or after your application for membership in the Pressmen's Union? A. Before.

Q. 29. If you remember, please tell us how the ring used for printing the border around those first envelopes compares in width with the ring now used on the regular stock Transo envelopes.

A. The ring was about an eighth of an inch in width on the first envelope.

Q. 30. If you remember, tell us what kind of inks were used in printing the ring or border around the window.

A. We tried several inks, but found that the opaque colors were the only colors we could use.

Q. 31. Do you remember anything about a strike or difficulty of that kind with the Franklin Union No. 4, here in Chicago?

Objected to as irrelevant and immaterial.

A. I do.

Q. 32. About when did that occur, if you remember? A. About the early part of March, 1904.

Q. 33. Do you remember what caused that strike? Same objection.

A. The proofers going into the Pressmen's Union.

Q. 34. Do you mean yourself and others going into the Pressmen's Union? A. Yes, sir.

(Testimony of Joseph Wien.)

Q. 35. Please tell us about how active or violent that strike became.

Same objection. [382]

A. The strike was so violent we could not go home for two weeks.

Q. 36. Did any of the fellows get beat up or slugged during that strike? A. Yes, sir.

Q. 37. Do you think you would recognize, at the present time, any of the envelopes which you say were made with the ring around the transparent window, in January, 1904, if you were to see them now?

A. I would.

Q. 38. Look at these two envelopes that I now show you, and state what they are, if you know.

A. This is one of them printed with oil in January, 1904, with a ring around it, that I remember.

Q. 39. What is the name printed in typewriting on the envelope that you have just referred to?

A. Defendant's Exhibit January, 1904, Envelope, No. 1.

Q. 40. Look at this other envelope that I show you, and state whether or not you recognize it.

A. I recognize this as No. 2 envelope.

Q. 41. Which one would you say was made first, if there is any difference? A. Envelope No. 1.

Q. 42. What is printed on this second envelope that I have shown you?

A. Defendant's Exhibit January, 1904, Envelope, No. 2.

Q. 43. What kind of ink was the ring printed with in the No. 2 envelope? A. Opaque ink.

(Testimony of Joseph Wien.)

Q. 44. Look at the width of the ring printed on these two envelopes, and state whether that is the width that you referred to in one of your previous answers as about an eighth of an inch wide.

A. That is the width.

Q. 45. With these two envelopes before you, when would you say that you saw them first? [383]

A. In about January, 1904.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 46. Are those old envelopes, Exhibits No. 1 and No. 2, exact same envelopes that you saw, you say, in 1904, or are they copies?

A. Those are envelopes that I saw in 1904.

XQ. 47. Have these two envelopes introduced in evidence as Defendant's Exhibits Old January, 1904, Envelopes Nos. 1 and 2, been in your custody and possession for the past six years or so?

A. They have not.

XQ. 48. When did you first see these two envelopes before you? A. About January, 1904.

XQ. 49. As a matter of fact, had you ever seen those two precise envelopes before they were shown to you a few minutes ago by counsel?

A. I have seen envelopes in January, 1904.

XQ. 50. That is not an answer to my question.

A. I decline to answer that.

XQ. 51. What day was that strike declared?

A. About March, 1904.

XQ. 52. What time in March?

(Testimony of Joseph Wien.)

A. About the early part of March.

XQ. 53. Can't you come a little closer to the date than that? A. No.

XQ. 54. Are you sure it wasn't in April?

A. No.

XQ. 55. You are not sure it was not in April?

A. No.

XQ. 56. How long did the strike last?

A. About two weeks.

XQ. 57. What was the reason of settling the strike? Or what brought about a settlement of the strike?

A. The settlement of the strike was that the proofers should stay in the Pressmen's Union, and the entire shop with the International organization, which the Franklin Union lost. [384]

XQ. 58. Were you a striker? A. I was not.

XQ. 59. What Union did you belong to?

A. Franklin.

XQ. 60. How long have you been a member of Franklin Union? A. About four years.

XQ. 61. Was Mr. Sauerman a member of Franklin Union? A. He was.

XQ. 62. When did you join Franklin Union?

A. I can't go back that far.

XQ. 63. What do you mean by not being able to go back that far? A. I decline to answer.

XQ. 64. When did you make application for membership in the Franklin Union?

A. I decline to answer.

(Testimony of Joseph Wien.)

XQ. 65. Why was it that you said that the envelope, Defendant's 1904 Exhibit No. 1 was printed before Defendant's Exhibit 1904 Envelope No. 2?

A. Because I have seen it printed first.

XQ. 66. What interval of time intervened between the printing of No. 1 envelope and No. 2 envelope?

A. I cannot specify the exact time.

XQ. 67. Was there a difference of one day, or one week, or one month, or one year?

A. They were both done in January, 1904.

XQ. 68. How is it that you are positive that one was printed before the other, and what's the reason for your answer?

A. That is very simple for me to answer, for I had seen the No. 1 envelope printed first.

XQ. 69. Why do you know that No. 1 was printed first, and why do you have such a clear recollection as to that fact?

A. The No. 1 envelope is so poor—the border is so poor around it—that it would be impossible to forget the [385] difference between the two.

XQ. 79. And that is your reason of saying that No. 1 was printed before No. 2? A. Yes, sir.

XQ. 71. You said that you had used or experimented with a number of different colors of border before you adopted opaque ink. What other colors did you use or try?

A. I have only tried one tint before I adopted opaque color.

XQ. 72. What tint was that?

A. That's the one you see on No. 1 envelope.

(Testimony of Joseph Wien.)

XQ. 73. What was the general comment at the time you say this work was done and you produced the old envelope Defendant's Exhibit No. 2? Was it considered something pretty good and new, or what?

A. The border around the envelope was not anything new, to my knowledge. I have seen those things done every day.

XQ. 74. That is not an answer to my question.

A. I couldn't say that it was considered new because I had seen that done every day.

XQ. 75. You mean to say that prior to that time, you had seen, every day, transparent envelopes, like the Defendant's No. 2, with a border around them?

A. No. I mean to say that I have seen borders printed around, similar to the ones around the envelopes, on other stuff.

XQ. 76. What do you mean by "other stuff"?

A. Well, anything in color work that has defective edges.

XQ. 77. I suppose you are referring to three-color work and pictures such as shown in this old Art Calendar, defendant's exhibit; am I right?

A. Not exactly that. I have seen other stuff besides that, which I have printed myself, millions of them. [386]

XQ. 78. What I want is for you to define more clearly what you mean by "other stuff"?

A. Any commercial work of all kinds—everything in general in the line of printing.

XQ. 79. I believe you have just stated that you had never seen it used, though, in connection with the

(Testimony of Joseph Wien.)

manufacture of one-piece transparent envelopes; that is right, isn't it? A. No.

XQ. 80. Then do you mean to say that you had seen a border used around transparent one-piece envelopes, or a border around the window of said envelopes, before these 1904 operations?

A. I have seen a border printed around all kinds of work, not exactly envelopes alone.

XQ. 81. I ask for an answer to the question.

A. I had not seen a border printed around envelopes.

XQ. 82. In any of that old printing or commercial work, where you say you had seen a border, was it common to print the picture on one side of the paper and put the border on the other side of the paper?

A. You mean the picture on the back of it and the border on the face of it—was it common to do that?

XQ. 83. Yes. A. No.

XQ. 84. What was the general comment around the shop, when this old envelope No. 1 and No. 2 was produced? I am not asking for what you may have known about a border in three-color work being old, but what did Mr. Regenstein or Mr. Reese or any one else interested say in your presence about what they thought of that envelope as an envelope?

A. I decline to answer.

XQ. 85. You said that one of the difficulties you had in getting up that old envelope or printing it, rather, was to find a proper opaque ink. Please give us a detailed [387] statement of just the steps you

(Testimony of Joseph Wien.)

took, or the experiments you made before you arrived at what you thought was satisfactory result.

A. I decline to answer.

XQ. 86. What was the year and month that you went to work first for Mr. Regenstein or for his firm or concern with which Mr. Regenstein was connected at that time?

A. I worked for American Three-Color about ten years ago, with which Mr. Regenstein was connected.

XQ. 87. Question re-read.

A. I cannot state the year or month. It's about fifteen years ago that I first began. I worked altogether about ten years for the American Three-Color, which was afterwards consolidated and called the American Colortype.

XQ. 88. Going back to the time when you were working for the American Colortype Company under Mr. Regenstein in January, 1904, how long previous to January, 1904, had you been continuously with Mr. Regenstein's company?

A. I was with that company prior to January, 1904, about five years, when it was called the American Colortype Company.

XQ. 89. Give the year, as near as you can, when you began with the American Colortype Company, in accordance with your last answer.

A. It is pretty hard, as to the time. It is hard for me to give the exact date prior to that time, for it is about three years and a half since I am away from the American Colortype.

XQ. 90. What month did you quit the American

(Testimony of Joseph Wien.)

Colortype? A. In July.

XQ. 91. What year? A. 1907.

XQ. 92. So you can't tell when you went to work for the [388] American Colortype Company any nearer than it was four or five years before January, 1904? Is that correct? A. Yes, sir.

XQ. 93. Are you able to say whether it was in 1901, or 1900, or 1899? A. No.

XQ. 94. What Union did you belong to in January, 1904? A. Franklin.

XQ. 95. At the time these envelopes were made, as you testified, in January, 1904, just what were your duties in the press-room?

A. My duties in the proving-room as a proofer.

XQ. 96. What did you have to do around the presses? A. A proofer of plates.

XQ. 97. Is the press-room and the proof-room different? A. Yes, sir.

XQ. 98. Where do you do your proofing up of the plates, on the press itself or in the proofing-room?

A. There is presses in the proofing-room to do the proofing up.

XQ. 99. Were these old envelopes of 1904, Nos. 1 and 2, printed on one of the presses in the proofing-room or one of the presses in the press-room?

A. They were printed on one of the presses in the proofing-room.

XQ. 100. Who was the pressman or feeder on the machine that printed those old envelopes of 1904?

A. Ernest Sauerman printed some of the envelopes.

(Testimony of Joseph Wien.)

XQ. 101. Who printed those two before you, Defendant's Exhibits Nos. 1 and 2?

A. Mr. Sauerman.

XQ. 102. Did you print any yourself?

A. I did. [389]

XQ. 103. How are you able to distinguish the ones that you printed and the ones that Mr. Sauerman printed?

A. I finished the job on the pony press after Mr. Sauerman started.

XQ. 104. That is not an answer to the question.

A. That's very hard.

XQ. 105. But you have just sworn that Mr. Sauerman printed those two and you did not. Now, what was the reason for that answer?

A. Mr. Sauerman has done the biggest part of the envelope work. I just had about one or two experiences with them.

XQ. 106. As a matter of fact, did you ever print any of those old envelopes in 1904, as you have testified to, yourself? A. I did.

XQ. 107. Then, you have not stated how you recognized those two particular envelopes, marked Defendant's Exhibits No. 1 and No. 2, and which you have sworn were printed nearly seven years ago, as the work of Mr. Sauerman and not of yourself. Did you use one kind of paper and Sauerman use another, or did you do your work with one kind of ink and Sauerman do his with another, or is there some other distinguishing feature by which you so readily recognize these envelopes as not the ones made by

(Testimony of Joseph Wien.)

yourself? I would like to have you explain, for the benefit of the Court, the reasons for your previous answers that these envelopes were Sauerman's work, and not your own.

A. The reasons for those envelopes being Sauerman's work is the difference the way the ink lays on the paper. That is the reason it is Sauerman's work—the two presses do not give the same kind of an impression.

XQ. 108. Just explain a little more fully what you mean by the ink laying on the paper. [390]

A. The ink on the paper on a universal press has a tendency to squeeze right out, which will cause modulation, which you plainly can see, which it does not do on the cylinder press.

XQ. 109. Are you referring to the border or to the printing of the oil? A. Both.

XQ. 110. What kind of a press were you working with at that time? A. A cylinder press.

XQ. 111. What sort of a press was the oil put on with?

A. The oil was put on with a universal press, on those envelopes that are now here.

XQ. 112. At that time, what part of the shop did Mr. Sauerman work in?

A. Mr. Sauerman and I worked alongside of one another.

XQ. 113. Who applied the border?

A. Mr. Sauerman applied the border on those envelopes that are now here.

XQ. 114. Who made the border?

(Testimony of Joseph Wien.)

A. Mr. Olson made the border, under Mr. Regenstein's instructions.

XQ. 115. Were you present, and did you hear Mr. Regenstein give those instructions to Mr. Olson?

A. I was, and I heard Mr. Regenstein tell Mr. Olson to make a border for the envelope.

XQ. 116. Just what did Mr. Regenstein say?

A. "Gus, go upstairs, take a block of zinc, make a border as soon as possible so I can print around this paper."

XQ. 117. Just what hand did you have in making those two particular envelopes before you, Defendant's old Exhibits 1 and 2? A. None.

XQ. 118. How did you know that the work then being done, of applying the oil and putting on of a border, was for an envelope with a transparent window?

A. I overheard them say something about an envelope, which would be transparent. [391]

XQ. 119. Just what did you hear, or what conversation took place along that line?

A. All I heard was that they were trying to make an envelope that will transfer the address to do away with addressing the envelope.

XQ. 120. Did you use an envelope-making machine in making these old January, 1904, envelopes?

A. I did not see an envelope machine in the factory.

XQ. 121. Was there an envelope-making machine in the factory?

(Testimony of Joseph Wien.)

A. I did not see any machine in the factory.

XQ. 122. Question re-read.

A. Not to my knowledge.

XQ. 123. Your company was not in the business of manufacturing envelopes, was it?

A. Not to my knowledge.

XQ. 124. I believe you stated that you saw all the operations of making these two complete envelopes, Defendant's 1904 Exhibits Nos. 1 and 2; that is correct, is it not? A. No.

XQ. 125. Wherein is it incorrect, and just state what you do know about the manufacture of those two particular envelopes, complete as they stand.

A. I have seen them print the oil and the border, on these envelopes.

XQ. 126. Who did the folding and pasting of the two envelopes before you?

A. That I do not know.

XQ. 127. Where were the folding and pasting done? A. That I do not know.

XQ. 128. How long a time elapsed between the preparation of the paper for those envelopes and the time when you saw those two envelopes complete? A. About two weeks.

XQ. 129. How do you fix that interval of time so definitely?

A. That is when I seen them in the proofing department. [392]

XQ. 130. Question re-read.

A. That is when I seen them in the proofing department after they were printed.

(Testimony of Joseph Wien.)

XQ. 131. I still believe that is not an answer to the question.

A. That is the best answer I can give to that effect.

XQ. 132. When and where did you see the paper first, prepared and ready for folding into the envelopes, Exhibits 1 and 2?

A. In the proofing department, two weeks—about two weeks before I seen them finished.

XQ. 133. When and where did you see them finished?

A. In the proofing department, about two weeks after they left the proofing department.

XQ. 134. Still we are at sea for a starting point of time for either of your answers of the last two questions. Are you able to supply the deficiency by the day, month and year in either case?

A. In January, 1904. The latter part. I seen those envelopes in the proofing department.

XQ. 135. So you have now fixed the date of seeing these envelopes, Defendant's 1904 Exhibits 1 and 2, definitely as the latter part of January, 1904. That is correct, is it not? A. Yes.

XQ. 136. It couldn't by any possibility have been the early part of January, 1904, that you saw them complete? A. No.

XQ. 137. How do you account for so long an interval between the time you first saw the sheet prepared in the early part of January until the time you saw the completed envelope two weeks later?

A. Because they were not in my possession to see them any sooner.

(Testimony of Joseph Wien.)

XQ. 138. With what sort of a press—a universal press or a cylinder press—was the border printed on these old [393] January, 1904, envelopes?

A. Gally universal.

Redirect Examination.

(By Mr. BANNING.)

RDQ. 139. Am I to understand, from some of your answers, that there is a difference in the way the ink is placed on the paper by a universal press and by a cylinder press, so that such difference may be discerned or observed by one experienced with the operation of such presses? A. There is a difference.

RDQ. 140. Mr. Townsend asked you several questions which you stated that you declined to answer. Why did you decline to answer those particular questions?

A. Because I thought I could not give correct answers to them.

RDQ. 141. Then, may I understand that when you stated that you declined to answer the questions, you meant that you could not give a definite or absolute answer to the questions?

A. You may so understand.

Recross-examination.

RXQ. 142. And I suppose it is equally true that all of your answers given to questions propounded to you by both Mr. Banning and myself are definite and absolute answers to those questions?

A. They are.

(Testimony of Joseph Wien.)

Redirect Examination.

(By Mr. BANNING.)

RDQ. 143. You mean as far as you were able to make them definite and absolute, do you? A. I do.

JOSEPH WIEN.

Adjourned until Wednesday, December 7, 1910, 10 o'clock A. M. [394]

Chicago, Illinois, December 7, 1910.

Parties met pursuant to adjournment. Present as before.

[Testimony of Gustaf Olson, for Defendant.]

GUSTAF OLSON, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Gustaf Olson; age, 33; 3617 Wrightwood Avenue, Chicago, Illinois; engraver by trade.

Q. 2. For whom are you working?

A. American Colortype Company.

Q. 3. How long have you worked for the American Colortype Company?

A. I have worked in this company sixteen years.

Q. 4. Was it always known by the name of the American Colortype Company?

A. No. American Three-color Company and Photo Colortype Company.

Q. 5. How long have you known Mr. Julius Regenstein, here present? A. About sixteen years.

(Testimony of Gustaf Olson.)

Q. 6. About how long have you worked under Mr. Regenstein?

A. I should think about eleven years.

Q. 7. What kind of work were you engaged in while working under Mr. Regenstein?

A. As engraver.

Q. 8. As engraver, what kind of work or engraving did you do? A. Three-color work.

Q. 9. What part of the work did you do?

A. In engravings, similar to wood engravings. It's finish-up color work.

Q. 10. How finish-up color work?

A. In color-work, the mechanical parts leaves pictures a little bit underdone, and an engraver must necessarily go over it by tooling, and in that way correcting colors to make the reproduction more like the original from which it was photographed.

Q. 11. What, if anything, was done to give the margin or edges [395] of the pictures a finished or ornamental appearance?

The question is objected to as irrelevant and immaterial of any of the issues of the present case.

A. We must necessarily engrave a plate that will constitute a line covering over any defects that are left in between edges or borders.

Q. 12. Did you make such plates in your work as engraver? A. Yes; often.

Q. 13. How long have you made plates for printing a border or ring around and over the edges of colored pictures, to cover up defects, such as you have mentioned?

(Testimony of Gustaf Olson.)

The question is objected to as leading and suggestive, and as not in accord with the testimony of the witness as to what had been his practice; the question is further objected to as irrelevant and immaterial, to either of the issues of infringement or of anticipation, or to show any prior art.

A. Off and on for seventeen or eighteen years; as I was a wood engraver before working for this company.

Q. 14. Look at this book which I now show you, which has been offered in evidence as Defendant's Exhibit Osborne Art Calendar for 1900, and state how long you have known of Osborne Art Calendars showing pictures of the general character of those contained in this book shown you.

A. Sixteen years back, I have seen work of this kind; and Osborne work about ten years.

Q. 15. Please indicate some pictures in this Osborne Art Calendar shown you, which show or illustrate borders around the pictures, such as you say you have made, if you find any such pictures.

The question and all questions along this line are objected to as irrelevant and immaterial. [396]

A. I call your attention to the picture No. 4453, "When the Frost is on the Pumpkin and the Fodder's in the Shock." This picture shows a green border printed over and around the edges of the color reproduction. This leaves an unfinished effect, as will be noticed by a dark rim showing between color illustration and border.

Q. 16. What do you mean by saying, "This leaves

(Testimony of Gustaf Olson.)

an unfinished effect”?

A. It shows where color reproduction and tint join together in one edge unsuccessfully in this case. Thereby leaving a dark green edge. This condition is overcome on page 20 in the same book in the plate No. 2024, “The Bride and the Fortune-Teller,” by printing a gold border, and thereby eliminating this dark green edge, which otherwise shows, by overlapping of colors. Also page 7, plate No. 4514, “Tales of Chivalry.” This shows a printed color-type with gold border. This gold border is covering over edges, which would otherwise show in yellow, red or blue. There are also other illustrations in the book which demonstrate the same.

Q. 17. What is the purpose or object of the ring or border around the pictures, such as you have called attention to and others in this book?

Same objection, and on the further ground that the witness has not been shown to be an expert in envelopes and in the manufacture of envelopes of the character here in question.

A. Primarily, to cover defects; secondarily, to enhance the beauty and value in some cases.

Q. 18. I ask you to look at this book and point out two or three illustrations of pictures unprovided with borders, which illustrate the effects that you have reference to.

A. Page 12, plate 4154, “An Old Road in Virginia—Sunset,” [397] shows a red and yellow discoloration on the bottom of the left-hand side of the picture. Plate 4654, “Among the Lilies,” opposite page

(Testimony of Gustaf Olson.)

16, the bottom right-hand side and top, show bad discolorations, due to the plates not being properly cut. Page 15, plate 4634, "A Venetian Girl," the right-hand side of the plate shows red and yellow extending below the blue, consequently giving a discoloration. The top and left-hand side also show ragged edges.

Q. 19. How long do you say that you, yourself, have made plates for the printing of rings or borders around and over the edges or margins of the pictures, to cover up or conceal defects and to add a finished or ornamental appearance to the picture?

Same objection.

A. About seventeen years.

Q. 20. Did you ever make such plates for other kinds of pictures than color pictures? A. Yes.

Q. 21. What kinds?

A. Before I worked in color work, we often made what is called two-tone, as showing a green and orange, or red and blue, and when picture would show bad edges, we were obliged to print borders around and over those edges.

Q. 22. About how many years ago was that?

A. About sixteen or seventeen years, and often in the intervals since then.

Q. 23. What was the object or purpose of the borders around these green and orange, or red and blue pictures? A. They were to cover up defects.

Q. 24. Did you ever make any plates for printing borders for any purpose for or under the direction of Mr. Regenstein? A. Yes.

Q. 25. Please tell us what you made borders for

(Testimony of Gustaf Olson.)

Mr. Regenstein [398] for.

Objected to as irrelevant and immaterial, as the witness states that he was an engraver in the employ of Mr. Regenstein in the manufacture of three-color work; and it is not seen that the making of any specific borders for this sort of work, by express orders from Mr. Regenstein, would contribute to the determination of the issues of this case.

A. We made one especially of a ring to print over and around the window in an envelope.

Q. 26. Did you yourself make a plate for the ring or border mentioned in your last answer?

The question is objected to as irrelevant and immaterial, and no proper foundation laid.

A. Yes.

Q. 27. Prior to making the plate for the ring or border for the envelope, had you made plates for rings or borders for or under the direction of Mr. Regenstein, for other classes of work?

Objected to as irrelevant and immaterial.

A. Yes, sir, as referred to before.

Q. 28. How common a thing was it to make plates or rings and borders at Mr. Regenstein's place before you made the one for the envelope?

Same objection.

A. It was so common that any engraver would make a ring of this kind immediately upon seeing that the pictures showed any ragged edges, without even consulting with the foreman. In fact, everybody in the printing business used that method to cover defects.

(Testimony of Gustaf Olson.)

Q. 29. Please tell us about how you came to make the plates for the ring or border for the envelope work, that you have [399] referred to.

Objected to as irrelevant and immaterial, and no proper foundation laid.

A. Mr. Regenstein called me down to the office and instructed me how to make this ring.

Q. 30. What instructions did he give you?

A. He told me to make a ring on a plate of zinc to print around a window of an envelope, which he gave me as a size to go by.

Q. 31. Did he explain what he wanted it for?

A. Yes, sir.

Q. 32. Did he show you anything to go by?

A. Yes; as I have previously answered, he gave me a sheet of paper showing an oblong spot covered with oil and told me to make a ring to print around the edges.

Q. 33. Did you make the plate as directed by Mr. Regenstein? A. Yes.

Q. 34. You may state what the fact may be as to whether or not you saw the plate used, or paper printed with the ring or border around the transparent portion for which you had made the plate.

A. Yes. When an engraver makes a plate he must necessarily see how it looks when printed, to determine whether he has made that plate correctly or not.

Q. 35. Do I understand that you saw and examined the paper with the ring or border printed from the plate that you had made?

A. I saw and looked at it—I didn't examine it thor-

(Testimony of Gustaf Olson.)

oughly, as to anything else but the way the plate fit.

Q. 36. How was the window in the paper, with the border printed around it, apparently made, if you remember?

The question is objected to, for the reason that the witness has just stated that he did not examine it except to see the way the plate fit. [400]

A. It was printed on a press by using oil instead of ink, which does not need examination other than looking at it to know.

Q. 37. The window or transparent portion was made in the paper itself, and not by a separate piece, was it?

A. It was only one sheet of paper, which became transparent by the use of oil in the spot where printed.

Q. 38. About how wide was the plate that you made for the envelopes,—by which I mean about how wide a ring or border did it print?

A. About one-eighth of an inch.

Q. 39. If you know, please state who did the printing on the press with this plate.

A. Ernest Sauerman.

Q. 40. If you know, state the kind of a press that Sauerman was using.

A. It is known as a universal press.

Q. 41. Did you make any other plate or plates for printing rings or borders around the transparent spot or portion on the paper for envelopes, like this one you have been telling us about?

(Testimony of Gustaf Olson.)

A. Yes, we made some more two or three weeks later.

Q. 42. What was the difference, if any, between the ones that you made after the first ones and such first ones? A. The next ones were a trifle wider.

Q. 43. Please look at these envelopes that I show you, and state whether there is anything shown on them which you recognize as your work, or about which you did anything.

A. I recognize these envelopes as printed by the plates I made.

Q. 44. Do you mean the first plate that you made or the later ones? A. The first plate.

Q. 45. About when was it, as nearly as you can remember or state, that you made these plates for printing the rings or borders for envelopes, as directed by Mr. Regenstein and as you have [401] explained?

I object to the question as leading, in that the witness has just had before him and has carefully examined the two envelopes referred to, and has attempted to identify them, or certain work that he did on them, and that on the face of each envelope there is printed, on a typewriting machine, the date which is evidently desired shall be given by the witness in his question.

A. In January, 1904.

I move that the answer be struck out, for the reasons stated in the objection.

Q. 46. How are you able to remember about the time when you made the plates for Mr. Regenstein for the envelope paper?

(Testimony of Gustaf Olson.)

Objected to as incompetent, in view of the foregoing circumstances.

A. Two months after this first trial, or about two months, we had a strike in our factory of Franklin Union No. 4 with Pressmen's Union No. 3, and I, as foreman of the engraving and proofing department, was obliged to go to Ernest Sauerman's home and acquaint his wife of how matters stood with him, as he had to stay in the factory night and day. Furthermore, my memory is keen on that matter as Sauerman's wife had given birth to a child a few days before this strike, consequently it became a moral obligation on my part to also keep Ernest Sauerman informed how his family was getting along; and I remember very well that this first plate I made was about two or three months previous to the strike.

Q. 47. At the time you made the first plate for the envelope border or ring, were you informed what the paper containing the transparent spot or portion which the border was to surround was intended for?
[402] A. Yes.

Q. 48. What were you told that it was intended for?

A. Mr. Regenstein explained to me that this oil leaked or ran in the fibers of the paper, so that it presented an unfinished appearance to the envelope, and that I should make the ring with which he would correct the appearance of it, by printing a border around the oiled spot.

Q. 49. Prior to that time, had you ever made rings or borders to cover up the ragged appearance around

(Testimony of Gustaf Olson.)

grease or oil spots?

Objected to, if it is attempted to prove by this witness anticipation by prior use, as his name has not been noticed to the complainant, as required by statute; and furthermore the question is objected to as suggesting the desired answer; also as incompetent and immaterial to show any prior art.

A. That question could be answered either way—yes or no. Ink is made up of a combination of different things, which is greasy to the touch, so that in making the rings to cover printing that shows bad edges, discolorations made by different colored inks, I would answer the question yes. On the other hand, this was the first time that I had made any plates to cover anything exactly like this envelope referred to.

Q. 50. If you know, state what the fact may be as to some kinds of inks printing or running so as to present ragged or unsightly edges in the work done.

Objected to as irrelevant and immaterial.

A. I am not an ink-maker, and do not know the ingredients used in making ink, but I do know that some ink runs a great deal, leaving ragged edges when printing, as if there were too much oil, and I know of other inks that we use in printing [403] covers and other things of that kind, such as rough papers and paper that is too highly finished. Consequently we call this a cover ink, and it is used because it is very thick and does not flow freely.

Q. 51. Prior to making the plates for the rings or borders for the envelope paper, as you have explained, had you seen work where the inks ran or

(Testimony of Gustaf Olson.)

spread at the borders?

A. It does so in most every case where a solid plate is used. I have seen this as far back as I can remember being in business.

Q. 52. In such cases as you have just mentioned, what was done, if anything, to cover up the running and spreading of the ink at the borders or edges?

A. In the first place, the printer would thicken up his ink or use a different kind of ink to prevent this spreading or he would run something around the border or edge to hide this defect.

Q. 53. Did you ever make any plates for the printing of a ring or border around the edges, to cover up the running or spreading of the ink as you have just mentioned?

The question is objected to as irrelevant and immaterial, unless it is shown to be connected with the art of transparent window envelopes.

A. Yes, just as often as the printer would decide that by printing a border he could eliminate the ragged appearance of the edges of the picture, I would have to make a plate for him.

Q. 54. How long ago have you made plates for printing a border around work, where the ink ran or spread, so as to present ragged or unsightly edges or margins?

Same objection. [404]

A. About sixteen or seventeen years ago.

Q. 55. How common a practice was it, to your knowledge, in the printer's art, to print rings or borders around different kinds of work, where the

(Testimony of Gustaf Olson.)

ink ran or spread, to cover up defects or unsightly appearances in the edges or margins of the work?

Same objection.

A. It is so common that everybody in the printing establishment would be expected to know it.

Q. 56. Was it a part of the common knowledge and practice of the printer's art? A. Yes.

Recess.

Q. 57. Referring again to the Osborne Art Calendar, and particularly to the pictures containing what I believe you called the gold border, I will ask you if such gold borders are printed on or applied by printing.

Objected to as irrelevant and immaterial.

A. When dark ink, it is necessary to print a size which has adhesive substance, and that is printed over by a plate which forms a border, then gold bronze powder is applied to this newly printed portion, either by hand or machine, and forms a finished product, as the pictures referred to. A gold ink, which has this powder mixed into its substance, can also be printed as a border on or around it, but gives best results only on white paper or light subjects.

Q. 58. From your knowledge and experience of such matters, how would you say the gold borders were applied in the pictures shown in this Osborne Calendar?

Same objection.

A. In this instance, these borders were printed with the size and bronze powder applied to it.

Q. 59. Is that what is termed applying metallic

(Testimony of Gustaf Olson.)

leaf or bronze [405] powder to form the border?

Same objection.

A. It is a bronze powder. Metallic leaf can also be applied, but it is only used in most expensive productions.

Q. 60. Look at this picture on page 46, plate 3034, "The Herring Grounds," and tell us how you consider that that gold border was applied.

A. In the same manner as preceding mentioned, by printing size and dusting bronze powder onto it.

Q. 61. I believe you said the bronze powder could be applied either by hand or by machine. What kind of a machine is used for that purpose?

Same objection.

A. It is what is known as a bronzing machine, into which sheets are run, therein to be dusted by mechanical appliances, with the bronze powder.

Q. 62. Where a border is printed around a color picture to cover up or conceal the overlapping of the colors or other defects, such overlapping or defects, for instance, as shown in this picture on page 12 of the book, "An Old Road in Virginia—Sunset," how far in is it necessary to have the border extend, in order to cover up the imperfections?

The question is objected to as assuming something not shown by the record or by the picture itself, that is, that it has any defects; as the picture referred to is a complete and finished specimen of three-color work.

A. It is usual to have the border lap about one-sixteenth of an inch.

(Testimony of Gustaf Olson.)

Q. 63. Far enough to cover the imperfections, I suppose? A. Yes.

Q. 64. What picture in this book affords a good illustration [406] of the overlapping of the border far enough to cover any objectionable or unfinished edges in the color picture itself?

Objected to as irrelevant and immaterial.

A. Page 38 of the Osborne Art Calendar.

Q. 65. Do you have reference to the picture "When the Frost is on the Pumpkin and the Fodder's in the Shock"? A. Yes.

Q. 66. These two envelopes that I showed you this morning, which showed the border printed from the plate made by you, as you explained, are the envelopes marked Defendant's Exhibit January, 1904, Envelope No. 1 and Envelope No. 2, were they not?

A. Yes.

Q. 67. I believe you are not now in the employ of Mr. Regenstein or the Transo Paper Company; is that correct? A. I am not employed by them.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 68. If the picture "An Old Road in Virginia," on page 12 of the Osborne Art Calendar, is as defective as you and counsel have stated in Q. 62 and answer, will you state why there is no border of any sort around that picture?

A. In a case of this kind, I refer to pictures in color work for calendars, it is sometimes considered unnecessary to go to further expense of printing a

(Testimony of Gustaf Olson.)

border to cover the defects, and pictures can be sold as they are.

XQ. 69. The so-called defects referred to are more matters of technique, are they not? That is to say, the defect is more apparent to the expert engraver, like yourself, or the maker of such pictures?

A. Not necessarily.

XQ. 70. As a matter of fact, isn't that merely a question of technique? [407]

A. No, because a discriminate buyer would at once reject work showing this defect on catalogue edition and work that is examined closely. In the matter of this calendar, that we mentioned above, as a rule a few hundred go to each buyer only, and such buyer gets a lower price on account of defects if complaint is made, just the same as some men buy a suit of clothes and wear it in spite of its ill-fittings, whereas others would have it made over.

XQ. 71. Did your answer have special reference to the pictures referred to on page 12; or merely to defective work generally?

A. My answer previously mentioned that calendar work being delivered in small lots, they would make a difference as against work put up in catalogues.

XQ. 72. I have been speaking particularly of that picture on page 12.

A. It would also refer to the picture on page 12.

XQ. 73. That is, a technical buyer, willing to pay the price, might have had some sort of a border printed around the picture on page 12; is that correct? A. Yes.

(Testimony of Gustaf Olson.)

XQ. 74. I suppose that in your opinion, the ring around the transparent window of the Transo company's envelope could just as well be omitted, as is the case in that borderless picture on page 12. Is that correct?

A. From what I know about the envelope, it's an improvement to have it on.

XQ. 75. I wish you would look at the picture on page 38 of the Continental Building & Loan Association Calendar, and state whether that picture of itself embodies or suggests the Transo envelope made in one piece with a transparent window portion, and with or without a border around the transparency.

A. In the first place, this green border around this picture, [408] "When the Frost is on the Pumpkin and the Fodder's in the Shock," on the right-hand side and bottom distinctly resembles and is printed in the same manner as the Transo envelope, excepting of course that the color picture is in the center here instead of the oil in the center of the ring of the envelope. I just answered the first portion of the question—the rest I don't understand.

XQ. 76. Question re-read.

A. I don't know what is meant by that—with or without a border.

XQ. 77. I meant, does that picture immediately suggest to your mind a one-piece transparent envelope like the Transo envelope?

A. I think it would, in this way, that if I held up a Transo envelope and looked through it at a landscape, I would see the same combination as we have

(Testimony of Gustaf Olson.)

here in this picture.

XQ. 78. It is in that sense, then, that you think that the picture would suggest the Transo construction?

A. No, not at all. I distinctly referred to the right-hand side and bottom of the picture, where it is overlapped by a green border, forming a dark line around the places mentioned.

XQ. 79. That is, you think that that portion of the border, at the right-hand side and bottom of the picture, on page 38, suggests one element of the Transo construction, that is, the border or ring around the transparency? A. Yes.

XQ. 80. In answer to Q. 29, you say that Mr. Regenstein called you down to the office and instructed you how to make the ring. What were those instructions, as you remember them?

A. He showed me a piece of paper with an oil spot on it, oblong, and requested me to make a ring which would fit half over [409] the white outside, making a ring about one-eighth of an inch wide.

XQ. 81. Was anybody present when those instructions were given you?

A. I don't remember. There may have been a number of persons in the room, because Mr. Regenstein was always busy attending to the work, and the employees had to submit proofs and finished work to him.

XQ. 82. I show you on page 114 of the Osborne Art Calendar two cuts, one of a box of cigars, and the other of a plaid cape, and ask if those are speci-

(Testimony of Gustaf Olson.)

mens of three-color work; and, if so, in what colors each plate is printed?

A. They are specimens of three-color work, and printed with yellow first, red second, and green third.

XQ. 83. Is there any suggestion or showing of a border around the box of cigars referred to?

A. No.

XQ. 84. Is there any suggestion or showing of a border around the outline of the plaid cape referred to? A. No.

GUSTAF OLSON. [410]

[Testimony of Max Lau, for Defendant.]

MAX LAU, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Max Lau; age, 47; 6333 Kenmore Avenue, Chicago, Illinois; Secretary of the American Colortype Company.

Q. 2. Are you acquainted with Mr. Julius Regenstein, here? A. I am.

Q. 3. How long have you been acquainted with Mr. Regenstein? A. About sixteen years.

Q. 4. Were you acquainted with a man named George Reese, in his lifetime? A. I was.

Q. 5. Do you remember of ever seeing Mr. Regenstein and Mr. Reese, or either of them, at work getting up one-piece transparent window envelopes?

Objected to as leading.

(Testimony of Max Lau.)

A. I do.

Q. 6. About when was that, according to your best recollection?

Objected to as no proper foundation laid.

A. It must have been prior to 1904. I happen to recollect the date on account of the fact that we had a strike on in March, 1904.

Q. 7. Who was that strike with, if you remember?

A. With the feeders.

Q. 8. The name of the Union?

A. The Franklin Union.

Q. 9. Who were you associated with in business at the time of that strike?

A. The American Colortype Company.

Q. 10. In what position or capacity?

A. I was third vice-president of the company and general superintendent of the factory.

Q. 11. That was the same company that Mr. Regenstein was connected with, was it? A. The same.

[411]

Q. 12. Who did you see working on these envelopes in any way?

Objected to as indefinite and no proper foundation laid.

A. Well, there was Mr. Regenstein, and a pressman named Sauerman, I don't remember his first name, it's been so many years ago.

Q. 13. Did you see any completed envelopes in those days?

Objected to as no proper foundation laid.

A. I did.

(Testimony of Max Lau.)

Q. 14. Who had them or showed them to you?

A. Why, Mr. Regenstein showed me some, and I also saw him making them.

Q. 15. Please describe the first envelopes that Mr. Regenstein showed you and you saw him making.

Same objection.

A. He made some kind of paper transparent, and he put a very narrow ring around it, what is called a border; and I think it was for the effect to eliminate the running of this oily substance.

Q. 16. You mean that the ring or border was around the transparent portion? A. It was.

Q. 17. Do you think you would recognize any of those first envelopes if you saw them to-day?

A. I would.

Q. 18. I show you two envelopes, and ask you to look at them and state what they are, if you know.

A. They are the envelopes I saw made at that time. I would say they are the same envelopes, to the best of my recollection. I would not swear that they were the same.

Q. 19. So far as you can see, do you recognize these as either envelopes which you saw in those early days, or like them? A. They look very much like it.

Q. 20. From examining them, what is your belief as to these envelopes shown you being some that you saw Mr. Regenstein [412] making in those early days?

The question is objected to as calling for the opinion of the witness and not for facts.

A. I should judge they are the same, as he used at

(Testimony of Max Lau.)

that time a very thin paper.

Q. 21. When do you say the strike with the Franklin Union occurred? A. In March, 1904.

Q. 22. Was it before or after that strike when you say the envelopes that Mr. Regenstein and Mr. Sauer-
man were making? A. It was before.

It is admitted by counsel for the parties respectively that the envelopes shown the witness are like the ones offered in evidence as Defendant's Exhibits January, 1904, Envelopes, No. 1, and No. 2.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 23. When did you first know of this suit?

A. About several weeks ago.

XQ. 24. How did you come to learn about it?

A. Mr. Regenstein told me about it. He called me up by phone.

XQ. 25. What was his purpose in so doing?

A. It happened to come along in some conversation we had in some business matters. [413]

XQ. 26. Did he at that time suggest that it was important to him to establish certain dates?

A. He simply asked me if I happened to remember when he made that envelope.

XQ. 27. What did you tell him?

A. I told him it must have been prior to the strike. That's all I told him.

XQ. 28. At the time you say that this envelope was made and shown you, and prior to the strike, was there much comment about it around the shop?

A. Naturally.

(Testimony of Max Lau.)

XQ. 29. Was it considered something novel and a pretty good thing?

A. Mr. Regenstein thought so.

XQ. 30. What feature did he speak of particularly at that time when he first showed it to you, prior to the strike? Did he refer to the envelope as a whole, or did he call attention to any particular features or advantages?

A. Well, he said if he could make an envelope which would be cheaper than the onion skin pattern, I think it was, it would be a great thing.

XQ. 31. How were those envelopes made, which you have testified about, and which you say were similar to the samples submitted a few minutes ago to you by counsel for defendant?

A. I cannot tell exactly, as I had nothing to do with them. It was Mr. Regenstein's own idea and they worked at it evenings, and Saturdays and Sundays. [414]

XQ. 32. I understood you to say that you saw Mr. Regenstein making these envelopes. That was in answer to Q. 14. What were the steps that you observed Mr. Regenstein taking in making them?

A. He took some paper and run it through the press with some sort of oily preparation. I don't know what it was; and after that he run it through the press once more and put some kind of border around the transparency, in order to finish it off, I think it was.

XQ. 33. Did the envelope come out of the press complete and finished?

(Testimony of Max Lau.)

A. You mean the regular envelope?

XQ. 34. What condition was it in?

A. It was in sheet form.

XQ. 35. What next did he do to complete the envelope?

A. I guess he had them die cut. I never saw him do that.

XQ. 36. That is only your supposition?

A. That's all.

XQ. 37. Then when you say that you saw Mr. Regenstein make these envelopes, you meant to say that you simply saw some paper treated with oil and some sort of a border printed around the oily portion; is that not true?

A. That's true in a certain way, but the sheet was laid out in such a way to make envelopes out of it.

XQ. 38. What do you mean by being "laid out"?

A. What I mean by being laid out is the way we lay any form out for printing purpose. [415]

XQ. 39. Do you mean to say that the sheet was laid out similar to this sheet, Complainant's Exhibit "G" for Identification? A. I do.

XQ. 40. That is, that there were several of these window transparencies with border printed simultaneously, on the one sheet run through the press?

A. Yes.

XQ. 41. So that several envelopes could be cut out from the one printed sheet that you saw at that time? A. I do.

(Testimony of Max Lau.)

Redirect Examination.

(By Mr. BANNING.)

RDQ. 42. Do you remember what kind of a press Mr. Sauerman was using in the printing of the first envelopes or blanks for envelopes that you saw?

A. I think the first press was universal press.

RDQ. 43. What kind of a press is a universal press? A. It is a power press.

RDQ. 44. Is it a large press or a small one?

A. A small press.

RDQ. 45. It is what is called a galley press, is it not?

Objected to as leading.

A. It is a galley type.

RDQ. 46. What kind of a press was used for printing the sheets containing a number of transparent places for the making of a number of envelopes? A. A Miehle press.

RDQ. 47. That is a cylinder press, is it not?

A. It is. [416]

RDQ. 48. Do you remember who operated that cylinder press?

A. It was Mr. Sauerman and Mr. Joe Wein.

RDQ. 49. Didn't Mr. Sauerman operate the universal press and Mr. Wein operate the cylinder press?

Objected to as leading.

A. That's correct.

RDQ. 50. Could the large sheets containing blanks for a number of envelopes be run on the universal press which was operated by Sauerman?

(Testimony of Max Lau.)

Objected to as an attempt to impeach their own witness.

A. No, they cannot run large sheets.

RDQ. 51. Did you see any printing done on the universal press for applying the oil and the border to sheets of paper?

Same objection.

A. If I recollect right, I saw something done on the small press.

RDQ. 52. Which was the press that was called the pony press, if you remember?

Same objection.

A. A small Miehle is commonly called a pony.

RDQ. 53. Without regard to what press the paper was printed on, what do you say as to having seen with Mr. Regenstein and the others, envelopes like those that were shown you, prior to the strike in March, 1904?

Same objection, and also as leading, and also as mere repetition.

A. I didn't see any envelopes of this kind before.

RDQ. 54. What do you mean by your answer?

[417]

A. I mean envelopes made similar to those.

RDQ. 55. Do you mean that you never saw envelopes like those before Mr. Regenstein showed them to you?

Objected to as leading, and not the testimony of the witness.

A. I never did.

RDQ. 56. And when did you see those that Mr.

(Testimony of Max Lau.)

Regenstein showed you?

The question is objected to, as it has already been answered in reply to RDQ. 53.

A. I cannot tell exactly, but it must have been prior to March, 1904.

MAX LAU.

Adjourned until Thursday, December 8, 1910, ten o'clock A. M. [418]

Chicago, Illinois, December 8, 1910.

Parties met pursuant to adjournment. Present as before.

[Testimony of Alexander B. Sherwood, for Defendant.]

ALEXANDER B. SHERWOOD, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Alexander B. Sherwood; age, 53 years; 4528 Michigan Avenue, Chicago, Illinois; practical lithographer and president of the Sherwood Lithograph Company.

Q. 2. How long have you been in that business?

A. Thirty-four years.

Q. 3. What kind of work is lithographing work?

A. A method of surface printing, either from stone, zinc, or other surface.

Q. 4. In doing lithographic printing, what is the custom or practice where the picture or design

(Testimony of Alexander B. Sherwood.)

printed has defects or is objectionable in appearance around the edges or margins?

Objected to as irrelevant and immaterial.

A. I understand your question means the outer margin of the picture or design. It is always usual or customary to obliterate any of these ragged margins or inequalities, by covering with a suitable (solid) border to give or make a perfect printing edge for the whole design.

Q. 5. How long has it been customary from your knowledge of the lithographic art to print a border around the outer edges or margins, as you have just explained? [419]

Same objection.

A. Ever since I have been identified with or have had knowledge of the business—thirty-four years.

Q. 6. I show you here a sheet of paper, and ask you to state what kind of work this represents.

A. That is a lithograph label job, done in the usual way on a stone.

Q. 7. This sheet that I have shown you is merely for illustrative purposes, and so I ask you if it shows or illustrates the borders that you have mentioned in your previous answers?

Same objection.

A. It does, very nicely.

Q. 8. What would you say that the borders shown on this sheet were composed of—metallic leaf or bronze powder, if either? A. Bronze powder.

Q. 9. Tell us briefly how bronze powder is applied to make the borders, such as you have been

(Testimony of Alexander B. Sherwood.)

acquainted with and such as are shown on this sheet.

Same objection.

A. The bronze border, as represented on this sheet, is drawn directly on the stone with greasy pigment, called "tousch," or it may be perhaps transferred from other already made designs onto this large sheet in conformity with the colors already printed thereon. The design is then printed in or onto the sheet with an ocher or bronze color; while it is yet fresh in its relation to the paper, it is passed through a bronzing machine suitable for the purpose, the bronze adhering to the wet or printed portion of the design, and in turn the [420] surplus powder is dusted on the other parts of the sheet. The bronzing can also be done by hand in the same manner.

Q. 10. In either case, the result is a border around the picture or design, as shown on this sheet?

A. Yes, sir.

Q. 11. How long, to your knowledge, has it been the custom or practice in the lithographing art, to make or apply the borders, as you have explained?

Objected to as irrelevant and immaterial.

A. Always, for I know of no other method.

Q. 12. What is the purpose or object of applying a border around a picture or design, as you have explained?

Same objection.

A. There are several; the first and primary object being that it covers up the inaccuracies of the register of colors where they are brought out to the

(Testimony of Alexander B. Sherwood.)

edges of the design; second, it is often economical, rather than to take up the artist's time or the transferrer's time, or the plate maker's time, in trying to do it by the other method, which would be one full of technical hard possibilities; third, it adds perhaps to the artistic appearance of the design. There are other minor reasons, perhaps, but these are the principal ones.

Q. 13. I notice, on a part of this sheet, two designs with the words "Holman's Perfume, Holman, Chicago," printed on them, which do not have a border printed around them. Please look at those two particular designs, and state whether or not they illustrate the unfinished appearance around the outer [421] edge or margin that you have mentioned.

A. They do, sir, very well.

By Mr. BANNING.—Defendant's counsel offers in evidence, the portion of the sheet shown to the witness, containing the two particular "perfume" designs referred to in the last question, and asks to have the same marked "Defendant's Exhibit Illustration of Lithographic Work."

By Mr. TOWNSEND.—The receipt in evidence of the exhibit just offered is objected to as irrelevant and immaterial.

Q. 14. Have you any knowledge of the use of borders in the printing art generally, or distinct from the lithographic work?

A. Yes, sir. The method in each kind of business is practically the same, and the result obtained, so far as that particular feature goes, is the same.

(Testimony of Alexander B. Sherwood.)

Q. 15. How long have you known of the use of borders by printers, for either covering up unsightly edges or margins on the work being done, or for giving definition or sharpness of outline to the work included in the border, or for other purposes?

Objected to as leading; also as irrelevant and immaterial with relation to the art of making transparent window envelopes.

A. It has always been the practical and common method of handling such work; to my knowledge for thirty-four years. [422]

Q. 16. If you had been printing a work or design or picture of any kind, for, say, the last thirty years, and you found that the ink or colors or whatever was used ran or spread, so as to create an objectionable or unsightly outer edge or margin, what, in the exercise of your knowledge of the lithographing and printing arts, would you have immediately done to cover up or obliterate such objectionable outer edges or margins of the work?

Objected to as indefinite, and irrelevant and immaterial.

A. The first thought that would occur to me, both from the economical and practical standpoints, would be to make a border which was sufficiently wide and solid to cover over and obliterate these unsightly edges, either by printing in a stronger color itself than the colors underlying, or by finishing with a bronze border, as on the sheet here before me.

Q. 17. What would you say as to its requiring any

(Testimony of Alexander B. Sherwood.)

invention on your part, or on the part of any other printer, to print a border in such a case?

Objected to as no proper foundation laid; as indefinite, and as calling for the opinion of the witness and for a legal conclusion.

A. The question appears ridiculous to me, for the proposition as you state it is so self-evident to any practical man that there could be no question about his being foolish enough, in view of that being the only way to get over the difficulty, and which is commonly and universally known.

Q. 18. By "foolish enough," you mean simple enough? A. Yes, sir. [423]

Q. 19. Are you in any way financially interested in the result of this litigation? A. No, sir.

By Mr. TOWNSEND.—No cross-examination.

(Sgd.) ALEXANDER B. SHERWOOD.

[**Testimony of Emil A. Le Gros, for Defendant.**]

EMIL A. LE GROS, a witness produced, sworn, and examined on the part of the defendant, in answer to questions by Mr Banning, deposed and testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Emil A. Le Gros; age, 36; 3943 W. Ohio Street, Chicago, Illinois; I am the vice-president of the Franklin Company, and manage the engraving end of the business.

Q. 2. How long have you been acquainted with the engraving business, and the printing business?

(Testimony of Emil A. Le Gros.)

A. About twenty-one years.

Q. 3. In the engraving and printing business, what is the practice or custom, when a picture or piece of work of any kind shows defective, ragged, or unsightly edges or margins, to cover up or obliterate or conceal such unsightly or objectionable edges?

Objected to as leading; furthermore as irrelevant and immaterial.

A. It is customary to print a border of some kind around the picture.

Q. 4. How long have you known of such custom or practice in the engraving and printing arts?
[424]

A. As long as I have been in the business.

Q. 5. From the knowledge and experience, what would a printer or engraver naturally have done if the work in hand showed a defective or unsightly appearance around the edges?

Objected to as indefinite, and irrelevant and immaterial.

A. Print a border around it.

Q. 6. Has that been the case, to your knowledge, for, say, the last fifteen or twenty years?

A. It has.

Q. 7. What have you to say, from your knowledge and experience, as to whether or not the printing of a border around the work would have involved any invention?

Objected to as leading; as no proper foundation laid, and as calling for the opinion of the witness and usurping the function of the Court.

(Testimony of Emil A. Le Gros.)

A. I shouldn't think it would be considered an invention, because it has been used in the regular course of business right along.

Q. 8. I show you a book that has been offered in evidence as "Osborne Art Calendar for 1900," and ask you to look at it and state, if you can, about how long you have been acquainted with the Osborne Art Calendars similar to the one shown you.

A. I have been familiar with work of this character for about twelve years.

Q. 9. Are you financially interested in any way in the result of this litigation? [425]

A. I am not.

By Mr. TOWNSEND.—No cross-examination.

(Sgd.) EMIL A. LE GROS.

[Testimony of Adolph G. Voss, for Defendant.]

ADOLPH G. VOSS, a witness produced, sworn, and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. Please state your name, age, residence and occupation.

A. Adolph G. Voss; age, 37; 1037 Dakin Street, Chicago, Illinois; office manager of American Colortype Company.

Q. 2. How long have you been connected with the American Colortype Company?

A. Since it was organized on March 1, 1902.

Q. 3. Are you acquainted with Mr. Julius Regenstein here present? A. I am.

(Testimony of Adolph G. Voss.)

Q. 4. How long have you known him?

A. Since January, 1899.

Q. 5. What position did you hold or occupy with the American Colortype Company during the early years after it was organized in 1902?

A. Cashier.

Q. 6. How long were you cashier?

A. I am still cashier, as well as office manager.

Q. 7. Do you know one Joseph Wien and one Ernest W. Sauerman? A. I do. [426]

Q. 8. When did you get acquainted with them?

A. They were both with the company at the time of the incorporation.

Q. 9. If you remember, please tell us what position or work Wien and Sauerman did while they were with the American Colortype Company.

A. Mr. Wien was in charge of the proofing-room, Mr. Sauerman being his assistant.

Q. 10. What kind of a press did Wien and Sauerman use in the proofing-room, if you remember?

A. One pony Miehle, and several Gordon and universal presses.

Q. 11. Did you ever see either Sauerman or Wien printing paper with any oil or oily preparation to make portions of it transparent?

Objected to as leading, and no proper foundation laid.

A. I did.

Q. 12. In what room was that?

Same objection.

(Testimony of Adolph G. Voss.)

A. In the proofing-room.

Q. 13. You may state the fact as to whether or not you saw any paper printed by Wien or Sauerman, with transparent portions, provided with a ring or border around said portions.

Same objection.

A. I did.

Q. 14. Where did you see such paper with the transparent portions and the ring or border?

A. In the proofing-room. [427]

Q. 15. Which one printed the paper, with the transparent portions and the border around them, if you know?

Same objection.

A. Mr. Wien.

Q. 16. Did you see him printing the paper and borders?

Same objection.

A. I did.

Q. 17. On which press was he doing the work?

A. On the pony press.

Q. 18. That was a cylinder press, was it?

A. It was.

Q. 19. How did you come to observe the work that he was doing?

A. I had occasion to walk through the proofing-room, and my attention was attracted to the peculiar shape of a plate which was on the pony press at the time, and I asked Mr. Wien what the nature of the work was that he was doing. He explained to me

(Testimony of Adolph G. Voss.)

that he was printing transparent envelopes for Mr. Regenstein.

Q. 20. What peculiarities attracted your attention to the plate?

A. It was an entirely different makeup to the plates being used for our regular product.

Q. 21. If you remember, please state how many or about how many transparent portions were made on the paper that you saw Wien printing and talked with him about, as you have explained.

Objected to as leading, and no proper foundation laid. [428]

A. My recollection is that the group consisted of probably three or four.

Q. 22. You mean three or four transparent portions on the same sheet and made with the same impression of the press? A. I do.

Q. 23. What was the general shape or form of these transparent portions?

A. They were oval, about one inch high by I should say four and a half inches long.

Q. 24. How was the border printed around the transparent portions on the sheet of paper?

Objected to for lack of proper foundation.

A. By the use of the plate above mentioned, its purpose having been explained to me as aforesaid by Mr. Wien.

Q. 25. Please look at these envelopes that I now show you, and state how far, if at all, they show transparent portions and rings or borders around them, such as you saw Mr. Wien printing on the paper,

(Testimony of Adolph G. Voss.)

with the pony cylinder press.

Objected to as leading, and no proper foundation laid.

A. The oval and the printed ring are similar in all respects to those that I saw Mr. Wien printing at the time.

I move that the answer be struck out, as being the opinion of the witness; and no proper foundation laid. [429]

Q. 26. Tell us, as nearly as you can, when it was that you saw Wien printing the paper with the transparent portions and the rings or borders around such portions, as you have explained.

A. During the latter part of February or the early part of March, 1904.

Q. 27. How are you able to fix the date that you have given?

A. During the latter part of March, 1904, we had a strike, for which Mr. Wien was largely or rather indirectly the cause. During the early part of March, Mr. Wien made application to join a certain union. The union to which Wien belonged at the time, however, objected, taking the stand that he was not far enough advanced to join the higher union. In order to demonstrate that he had both the experience and ability he was at that time transferred to our press-room to act as a pressman. This act caused a dispute between the two unions, which culminated in the strike above mentioned.

Q. 28. If you remember, please state the names of those two unions.

(Testimony of Adolph G. Voss.)

A. The Franklin Union of Feeders, and the Pressmen's Union.

Q. 29. Where were the two rooms in which Wien worked—the proofing-room and the press-room—located with reference to each other?

A. The proofing-room was situated on the main floor in the north end of the building; and the press-room in the south end of the building, specially erected for it. [430]

Q. 30. In which of these rooms was it that you saw Wien printing the paper with the transparent portions and borders, as you have explained?

A. In the proofing-room.

Q. 31. Was it before or was it after the transfer from the one room to the other, as you have mentioned, that you saw Wien printing the paper, as you have explained? A. Before.

Q. 32. How definitely was the strike with the Franklin Union impressed on your mind?

A. It was the only strike of moment that our company has experienced, and I was called upon to serve notices of an injunction that our company had taken out, at the homes of several of such of our employees who were on strike.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 33. Please look at those two envelopes which counsel handed you, and interrogated you about, and state what there is about those two envelopes that you can identify them as the ones you saw printed

(Testimony of Adolph G. Voss.)
back in February or March, 1904.

A. By the transparent center and the printed border.

XQ. 34. Are those the same ones that you saw then?

A. I cannot say. The ones that I saw were in the form of a sheet, not yet die-cut.

XQ. 35. How did you know that that sheet was for the purpose of being made into an envelope or envelopes?

A. I was so informed by Mr. Wien. [431]

XQ. 36. Just what did Mr. Wien tell you, in so informing you?

A. He told me in substance that the printing was being done for a transparent envelope for Mr. Regenstein.

XQ. 37. Did he call your particular attention to the border?

A. It was the plate with which this border was being printed that led me to ask Mr. Wien what the work was for, and he then informed me, as above stated.

XQ. 38. Was the press running at that time?

A. I couldn't say.

XQ. 39. How big was the plate?

A. I should say possibly fifteen or eighteen inches square.

XQ. 40. How many rings were there on it?

A. As stated before, it consisted of a group containing probably three or four.

XQ. 41. What do you mean by a group?

(Testimony of Adolph G. Voss.)

A. A plate containing the three or four hollow ovals, such as were used for printing of the border of this transparent envelope.

XQ. 42. How were these hollow ovals grouped?

A. My recollection is that there were two rows of two each.

XQ. 43. Arranged one oval above another in each row, so that there were two ovals abreast of each other? A. I couldn't say.

XQ. 44. I am only seeking to see what the arrangement of these ovals were in these rows. Were the ovals arranged in pairs of each other, or alternating?
[432]

A. Further than saying that there were three or four ovals on this plate, I do not know.

XQ. 45. Then, what did you mean by saying that they were arranged in two rows, two in each row?

A. Because this would be the natural position, to my mind, if four were being used.

XQ. 46. Then, you were only guessing that they were arranged in that way?

A. I have stated before, that my recollection was that it was a plate containing a group of these ovals; and I am not in a position to state definitely the actual number, or how these ovals were arranged on the plate.

XQ. 47. Then, you would not swear that the testimony you have already given, to the effect that these ovals were arranged in two rows, one above the other, is correct? Your former testimony must be either correct or incorrect; then, which is it?

(Testimony of Adolph G. Voss.)

A. I have testified that my recollection was that these ovals were arranged on the plate as outlined above.

XQ. 48. You have given two outlines above: In answer to XQ. 42, you said: "My recollection is that there were two rows of two each." And in answer to XQ. 44 you said: "Further than saying that there were three or four ovals on this plate, I do not know." Now, both of those answers cannot be correct. Which is correct, if either, or have you another explanation to make?

A. The last one is correct.

XQ. 49. Then, you do not know how these ovals were grouped? [433] A. Not positively.

XQ. 50. You either know or you do not know, as knowledge is a positive thing; and I merely ask you if you want your answer to stand that you do not know how those groups were arranged on that plate?

A. I do.

XQ. 51. What color of ink was used on the plate?

A. I do not recall.

XQ. 52. What did Mr. Wien say further about these envelopes, or the plate he was working with, as to the scheme of getting up envelopes of that sort?

A. Nothing, that I remember.

XQ. 53. Did you see any actual sheets printed at that time, when you were talking with Mr. Wien?

A. I did.

XQ. 54. How was the transparency made on those sheets? A. I don't know.

XQ. 55. Didn't Mr. Wien explain that to you?

(Testimony of Adolph G. Voss.)

A. He did not.

XQ. 56. Did you ask him about it?

A. I did not.

XQ. 57. Did you notice the transparency at that time? A. I did.

XQ. 58. But if it hadn't been for the border, or the plate with the group of rings on it, you wouldn't have noticed the job otherwise, I suppose?

A. Exactly.

XQ. 59. When did you say you saw this plate with the rings? [434]

A. The latter part of February or the early part of March, 1904.

XQ. 60. Why do you fix on the latter part of February, 1904, or the early part of March?

A. Because Mr. Wien, as explained before, was transferred from the proofing-room to the press-room, along the middle of March of that year.

XQ. 61. I believe you stated that in the early part of March, Mr. Wien made application to join a certain Union. What Union was that?

A. The Pressmen's Union.

XQ. 62. You are positive as to that date?

A. I am.

XQ. 63. Did any other employees in the shop make application at the same time, for membership in that Union? A. Not to my knowledge.

XQ. 64. Where was the office situated in the building?

A. On the first floor, east of the proofing-room.

XQ. 65. At which end of the building?

(Testimony of Adolph G. Voss.)

A. North end. It was in the northeast corner of the building.

XQ. 66. Are you on intimate terms with Mr. Wien?

A. I haven't seen him for about four years.

XQ. 67. Were you on intimate terms with him when he was there in the proofing-room in 1904?

A. I had just a casual acquaintanceship with him.

XQ. 68. When did you first know that you were to be a witness in this case?

A. About noon to-day. [435]

XQ. 69. Who informed you that you were desired as a witness? A. Mr. Regenstein.

XQ. 70. What did Mr. Regenstein say when he asked you to be a witness here this afternoon?

A. He asked me whether I was willing to tell what I knew as to the printing of his envelope.

XQ. 71. Was it suggested in any way that it was desirable to establish certain dates?

A. He asked me whether I recalled the time, or about the time, that he was having experimental work done on his transparent envelope; and he gave me some idea as to what the information was for.

XQ. 72. What did he say the information was for?

A. He explained that one of his customers had been sued for using an envelope which he—Mr. Regenstein—had sold to him.

XQ. 73. I do not suppose any reference was made to the strike of 1904 during this conversation; but that you have simply referred to it or recalled it dur-

(Testimony of Adolph G. Voss.)

ing the course of your examination here, for the purpose of fixing these dates; is that correct?

A. While the question of the strike may have come up, it was entirely unnecessary, as the circumstances as related by me are perfectly clear, both as to the dates and facts stated above.

XQ. 74. So that your reference here, in the testimony, to the strike, as the determining factor in fixing these dates, has been purely spontaneous and voluntary? A. Perfectly so. [436]

XQ. 75. And I suppose the same is true with regard to the date of application for membership in the Pressmen's Union by Mr. Wien?

A. Perfectly so.

XQ. 76. Those two dates, of the strike and of Mr. Wien's application for membership in the Pressmen's Union, are indelibly impressed upon your mind, are they? A. Absolutely.

XQ. 77. Do you recall the year and month of the San Francisco earthquake and fire?

A. The month was April, and the year either 1905 or '06.

Redirect Examination.

(By Mr. BANNING.)

RDQ. 78. I believe, in answering a question, or rather in considering and discussing the meaning of the question, a few moments ago, you said something about not being positive, within a week or two, as to the exact date when Wien made his application for membership in the Pressmen's Union, but this was not taken on the record. Did I understand you

(Testimony of Adolph G. Voss.)

correctly, as to this matter?

A. What I meant to say was that I could not specify the actual date that Wien made his application, but that he did apply for membership some time between February 1st or previously, and March 10th, 1904.

I move that the answer be struck out as not responsive to the question, and as inconsistent with his previous testimony.

RDQ. 79. There was something said off of the record on the matter mentioned in my last question, was there not? [437]

A. As to the period of his making application?

RDQ. 80. Yes, the exact date? A. There was.

(Sgd.) ADOLPH G. VOSS.

It is admitted by counsel for the parties respectively that the envelopes shown to the witness Voss, and about which he was questioned, are duplicates of the envelopes offered in evidence as Defendant's Exhibits January, 1904, Envelopes No. 1 and No. 2. [438]

[**Testimony of George A. Behrens, for Defendant.**]

GEORGE A. BEHRENS, a witness produced, sworn, and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence and occupation.

A. George A. Behrens; age, 28; residence, 1416 Farwell Avenue, Chicago, Illinois; salesman.

(Testimony of George A. Behrens.)

Q. 2. Are you acquainted with Mr. Julius Regenstein here present? A. Yes.

Q. 3. How long have you known Mr. Regenstein?

A. About eight years.

Q. 4. Did you ever work for any company under Mr. Regenstein? A. Yes.

Q. 5. What company was that?

A. The American Colortype Company.

Q. 6. What did you do while working for the American Colortype Company, as you have said, while under Mr. Regenstein?

A. I was Mr. Regenstein's assistant.

Q. 7. When did you leave the employ of the American Colortype Company, if you did leave its employ?

A. The latter part of May, 1904.

Q. 8. While working for the American Colortype Company, were you acquainted with Ernest W. Saurman, and Joseph Wien? A. Yes, I was.

Q. 9. Do you remember where they worked?

A. Yes, I do. In the proof-room.

Q. 10. What kind of presses did they use in their work, if you remember? [439]

A. Universal presses and Miehle presses.

Q. 11. The Miehle press, I believe, was a cylinder press, was it?

Objected to as leading.

A. Yes, it was.

Q. 12. Which one worked with the cylinder press, and which one with the universal press, if you remember?

A. Joe Wien worked with the cylinder press; Er-

(Testimony of George A. Behrens.)

nest Sauerman worked with the Universal press.

Q. 13. How large was that Miehle cylinder press, if you remember?

A. It was one of their smallest sizes, called the pony press.

Q. 14. While Sauerman was working with the Universal press, and Wien with the cylinder press, what, if anything, do you remember of seeing, in the way of papers or envelopes provided with transparent portions, and with rings or borders around such portions?

Objected to as leading, and no proper foundation laid.

A. I remember having seen Ernest Sauerman print transparent portions, as well as a border printed around this transparent portion, at various times, about five or six months prior to my leaving the American Colortype Company.

Q. 15. Which press did Sauerman do this printing on? A. The Universal press.

Q. 16. Did Sauerman or anybody else tell you what the paper was intended for that was printed with the transparent portions and the border around such portions? [440]

A. Ernest Sauerman told me that they were being printed for Mr. Regenstein personally.

Q. 17. While you were still with the American Colortype Company, did Wien remain or work all the time in the proofing-room? A. No, he did not.

Q. 18. Where else did he work?

A. He worked in our large press-room.

(Testimony of George A. Behrens.)

Q. 19. Do you remember about when he was transferred from the proof-room to the press-room?

A. He was transferred to the press-room just prior to a strike we had in 1904.

Q. 20. Was that the strike with the Franklin Union No. 4, that I asked you about a few moments ago, in the other room?

A. That was prior to the strike with the Franklin Union No. 4, that you asked me about.

Q. 21. What caused that strike, if you know?

Objected to as irrelevant and immaterial.

A. I don't know the exact cause.

Q. 22. After the strike was declared, how were matters around the place of the American Colortype Company—serene and quiet, or the contrary?

Same objection.

A. There was naturally more or less trouble.

Q. 23. Look at these two envelopes that I show you, and tell us how the transparent portions and the rings or borders on them resemble those that you saw Sauerman printing on the Universal press, if at all?
[441]

Objected to as leading, and no proper foundation laid.

A. They resemble them generally. They look a good deal like those I saw at that time.

Q. 24. You may also state whether or not you saw Wien print any paper with transparent portions and borders around them, on the cylinder press.

Objected to as leading, and no proper foundation laid.

(Testimony of George A. Behrens.)

A. I don't remember having seen him print any.

Q. 25. For whom are you employed now?

A. American Colortype Company.

Q. 26. After leaving the American Colortype Company, about the latter part of May, 1904, for whom did you go to work during that summer?

A. I didn't work that summer.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 27. How long have you been employed in your present capacity as salesman for the American Colortype Company?

A. I have been employed, for the last five years, by the American Colortype Company, the last two years as salesman.

XQ. 28. And how employed during the preceding three years of the five?

A. I looked after the manufacturing end of the business.

XQ. 29. What month and year was it that you went with them this last time? [442]

A. February, 1906.

XQ. 30. Previous to February, 1906, where were you employed, if employed?

A. On the "Milwaukee Sentinel" newspaper.

XQ. 31. In what capacity?

A. Assistant in the circulation department.

XQ. 32. How long were you employed there?

A. About five months.

XQ. 33. Prior to that, where were you employed, if you were working?

(Testimony of George A. Behrens.)

A. On the "St. Louis Star," St. Louis.

XQ. 34. In what capacity?

A. Assistant in the circulation department.

XQ. 35. How long were you there?

A. A trifle over one year.

XQ. 36. Prior to that, what were you doing?

A. Prior to that I wasn't working.

XQ. 37. How long were you not working?

A. About three months.

XQ. 38. I suppose prior to that you were with the American Colortype Company with Mr. Regenstein?

A. Yes, sir.

XQ. 39. Just what were your duties under Mr. Regenstein?

A. Looking after the manufacture, seeing that jobs would get out on time.

XQ. 40. Was all your time spent in and about the shops? A. Yes, it was.

XQ. 41. Just what were the circumstances [443] surrounding your first acquaintance with these transparent envelopes and transparent paper that you testified about? That is, where you were at the time and what was said in regard to them, and who was present?

A. During my duties in following up the various jobs around the factory, I naturally came in touch with all departments of the business, and which led me into the proof-room several times each day. The first time I saw the prints referred to, I do not remember of any conversation taking place, but I looked at them very carefully, for the reason that

(Testimony of George A. Behrens.)

they were something entirely new from what I had seen done in our factory up to this time.

XQ. 42. You had never seen any work of that sort done before that? A. No, I had not.

XQ. 43. Regarding this work that you saw at that time, how was the paper prepared or printed? I would ask you to testify from your recollection, and not from any assistance that you might receive from the two envelopes which you hold in your hand and about which defendant's counsel has interrogated you.

A. It was printed singly on a Universal press.

XQ. 44. What do you mean by singly?

A. Merely one transparent portion or border.

XQ. 45. That is, one envelope at a time?

A. The transparent part of one envelope at a time.

XQ. 46. What was the shape of the envelope printed?

A. It was merely a square sheet of paper.

XQ. 47. And each one of these square sheets had a single transparency; is that right? [444]

A. That is right.

XQ. 48. Did you know then how the transparency was made?

A. I knew that it was made by printing an oily portion on the paper.

XQ. 49. Did you know how the border was applied?

A. The border was applied by printing with a dark color from a zinc plate or electrotype plate.

XQ. 50. Were those that you saw with borders all

(Testimony of George A. Behrens.)

of a dark color? A. I don't remember.

XQ. 51. Do you know whether the border and the oily potion were applied to the sheet at the same time or at different times? A. At different times.

XQ. 52. Do you know on which side of the sheet they were applied—whether on the same side or on opposite sides? A. I don't remember.

Redirect Examination.

(By Mr. BANNING.)

RDQ. 53. Mr. Behrens, I believe your father was one of the proprietors of the American Colortype Company while Mr. Regenstein was there?

A. Yes, sir, he was.

(Sgd.) GEO. A. BEHRENS. [445]

It is admitted by counsel for the parties respectively that the envelopes shown to the witness Behrens, and about which he was questioned, are duplicates of the envelopes offered in evidence as Defendant's Exhibits January, 1904, Envelopes No. 1 and No. 2.

Adjourned until Friday, December 9, 1910, 10 o'clock A. M.

Chicago, Illinois, December 9, 1910.

Parties met pursuant to adjournment. Present as before.

[Testimony of Oscar W. Bond, for Defendant.]

OSCAR W. BOND, a witness produced, sworn, and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

(Testimony of Oscar W. Bond.)

Q. 1. State your name, age, residence and occupation.

A. Oscar W. Bond; age 64 years; 6325 Monroe Avenue, Chicago, Illinois; patent soliciting and mechanical expert in patent causes.

Q. 2. Please state what training and experience you have had, in the soliciting of patents, the study and examination of patented structures, machines, devices, etc., and the testifying as an expert in patent causes, that qualifies you to give testimony as an expert, involving the comparison of patents one with another, and structures of various kinds, with the drawings, descriptions and claims of patents. [446]

A. I have been engaged as a patent solicitor for nearly forty years. During the time I have been engaged in soliciting patents, I have prepared and prosecuted several thousand applications for patents on various devices, machines, apparatus, and mechanical structures. The preparation of the papers for the applications for the patents necessitated my becoming familiar with the construction and operation of the devices and structures to which the inventions related, and this was necessary in order that I would have a clear understanding of the invention. The prosecution of the applications in the Patent Office, in almost every instance, required me to examine prior patents, relating to the same art to which the invention belonged, and have a clear understanding of the devices and structures of such prior patents, in order to differentiate the inventions of the applications from the inventions of such prior patents, so

(Testimony of Oscar W. Bond.)

that I could properly differentiate the invention and draw claims properly covering the new features found in the applications, over what was disclosed in the prior patents. I have made several hundred examinations in the Patent Office, of both U. S. patents and foreign patents, for determining the patentability of a device or other structure, and for the purposes of preparing a defense in patent causes. In this manner I have become familiar with patents and the mechanical arts generally. I have testified in a number of patent causes, as an expert, my experience as an expert extending over a period of thirty years. [447]

THE FIRST COHN PATENT SUED ON.

Q. 3. Please look at the Cohn patent sued on, No. 835,850, of November 13, 1906, applied for November 8, 1904, for improvements in envelopes, which, for convenience, I will hereafter refer to as the first Cohn patent, since it was the first one applied for of the two Cohn patents sued on, and state whether you have studied the patent, so as to understand the thing or article that is described and claimed in said patent.

A. I have studied the patent referred to in the question, and understand the construction of the article shown and described therein.

Q. 4. Please tell us, in your own language, what you understand to be the thing or article described and claimed in this first Cohn patent.

The question is objected to, since the patent itself

(Testimony of Oscar W. Bond.)

is the best evidence of its contents and legal effect and scope.

A. The thing or article shown and described in this first Cohn patent is an envelope, of that type having in its face or address side a transparent portion of limited area, around which is placed a border of an opaque character, which border can be a narrow rim, or can be the entire surface of the envelope outside of the transparent section thereof.

Q. 5. What is your understanding as to the purpose or object of the border that you have referred to, as gathered from a study of the patent itself?

Same objection.

A. It appears, from the specifications of the patent, that the transparent portion or section of the envelope is produced by the use of a compound or preparation having [448] more or less of an oil therein. It is well known that paper treated with an oily substance or material will result in having the material spread more or less, producing, around the edges of that portion of the paper to which the transparent material is applied, more or less of a ragged appearance, which is unsightly. It is for the purpose of blotting out this ragged edge that the border, no matter of what character, is made around the transparent portion or section of the envelope.

Q. 6. How many pieces of paper are employed by Cohn in making the envelope of his first patent?

A. A single piece of paper is employed, having the transparent section or portion on the front of the envelope, with the balance of the paper cut into

(Testimony of Oscar W. Bond.)

proper shape, so as to form, when folded, an ordinary envelope, with a transparent portion or section on the front or address side thereof.

Q. 7. Is the envelope of the first Cohn patent what may be properly termed a one-piece window envelope? A. Yes.

Q. 8. Please look at the patent to J. S. Brown, No. 36,393, of September 9, 1862, and state whatever you find the fact to be as to the kind of envelope shown and described in such patent.

A. This Brown patent shows and describes an envelope in which a section or portion thereof is made transparent, and the transparent section or portion is large enough so as to clearly show through it the address of a card or other article placed within the envelope. The transparent portion of the envelope or wrapper is so made by the use of suitable means or substances, [449] in the process of manufacturing the paper for the envelope, that will furnish a transparent section or portion, with the remainder of the envelope or wrapper opaque. The envelope is of the single variety or type of envelopes having a transparent section or portion in its front or address face.

Q. 9. What is the difference between the envelope shown and described in this Brown 1862 patent and the envelope shown and described in this first Cohn patent sued on?

The question is objected to, as the two patents are the best evidence of the differences.

A. The only difference is the addition, in the Cohn patent, of the border around the transparent section

(Testimony of Oscar W. Bond.)

or portion of the envelope, which border is lacking in the Brown envelope.

Q. 10. I call your attention to two envelopes, that have been offered in evidence as Defendant's Exhibit January, 1904, Envelopes No. 1 and No. 2, and ask you to examine them and compare them with the envelope shown, described and claimed in this first Cohn patent sued on, and give us your opinion as to the substantial identity or otherwise of these two envelopes shown you, with the envelope shown, described and claimed in the Cohn patent.

Objected to as leading.

A. I have examined the two envelopes referred to in the question. Both envelopes are single-piece transparent window envelopes, and each of them has a transparent section or portion made in the front or address side of the envelope, by the use of some material or compound of a nature to give the transparent effect. Both envelopes correspond, in respect to having a [450] transparent section or portion, to the envelope shown and described in the first Cohn patent.

The envelope No. 1 has the transparent section or portion surrounded by a border of an opaque nature, but light in color; while the envelope No. 2 has the transparent section or portion surrounded by a border of a darker nature than the border of envelope No. 1. Both envelopes have the transparent section or portion surrounded by a narrow border of an opaque nature, which border serves to hide or blot out to a greater or less extent, the ragged edge pro-

(Testimony of Oscar W. Bond.)

duced by making the transparent section or portion of each envelope. Both envelopes have a border corresponding to and for the same purpose as the narrow border used in making the envelope of the first Cohn patent, and the border in the two envelopes surrounds the transparent portion the same as the border does in the first Cohn patent.

The envelopes No. 1 and No. 2, in my opinion, are identical, in their nature, with the envelope of the first Cohn patent, as both of them have a transparent section or portion which is surrounded by a border of a more opaque nature than the portion of the envelope having the transparent section or part.

Q. 11. From your study of these old envelopes, what do you find as to the office or function performed by the border or ring surrounding the transparent portion of the envelopes?

A. The evident office or function of the encircling border around the opaque section or part is for the purpose of blotting out or obliterating the ragged edge produced in making the transparent section or part of the envelope, which ragged [451] edge is due to the tendency of the material or compound used in giving the transparent effect to run or spread in the paper around the edges of the transparent section or part.

Q. 12. State what your opinion may be as to the existence of any difference between these old envelopes under consideration and the envelope of the first Cohn patent, which, from your experience as a patent solicitor and with patents, could afford any

(Testimony of Oscar W. Bond.)

ground for novelty, invention, or patentability in the envelope of the first Cohn patent over these old envelopes.

The question is objected to as ambiguous; and also for lack of proper foundation.

A. There is no sufficient difference, in my opinion, between the envelope of the first Cohn patent and the two old envelopes, which would give novelty and patentability for the Cohn envelope over the two old envelopes.

Q. 13. State your opinion, whatever it may be, as to whether or not the envelope of the first Cohn patent and these old envelopes embody or exhibit one and the same invention, if invention be attributable to the one who first provided a one-piece transparent window envelope with a ring or border around the transparent section or portion.

A. The envelope of the first Cohn patent and the two old envelopes embody, in my opinion, the same invention.

Q. 14. I will ask you to assume that it has been shown, by the evidence of witnesses already examined on the part of the defendant, that it has been the common practise and custom, for at least fifteen or twenty years, in the printing art, to print borders around the edges of various [452] kinds of work, to cover up imperfections in the edges of the work, as shown, for example, in the Defendant's Exhibit Illustration of Printers' Border, and in the printing of three-color pictures, as shown, for illustration, in this book which I now show you, offered in evidence

(Testimony of Oscar W. Bond.)

as Defendant's Exhibit Osborne Art Calendar for 1900; and in the printing of lithographic work, as shown, for example, in the exhibit offered in evidence as Defendant's Exhibit Illustration of Lithographic Work, and to give us your opinion, whatever it may be, as to whether or not any invention, or anything more than the knowledge and skill of a printer in the practise of his calling or art, is involved in the printing of a border or ring around the transparent section or portion of an envelope, to cover up or conceal the running, bleeding or spreading of the oil into the texture of the paper, so as to cause ragged or unsightly edges, as shown and described in the envelope of this first Cohn patent sued on, giving your reasons for any opinion you may express.

Objected to as leading; no proper foundation laid; and calling for the mere opinion of the witness.

A. The Defendant's Exhibit Illustration of Printers' Border shows an example where a border is used around an exposed portion, printed in red or orange, in which the black border serves the purpose of concealing or obliterating the ragged edge, which would appear around the red or orange portion if the black border were not present. This illustration clearly shows the use of a border, by means of which the ragged edge of the part or [453] portion inclosed within the border is concealed or obliterated, thereby giving more definition to the part within the border, and giving the edge a perfect appearance instead of a ragged or imperfect appearance.

The Defendant's Exhibit Osborne Art Calendar

(Testimony of Oscar W. Bond.)

for 1900 contains various illustrations of color work enclosed within a surrounding border. One of the illustrations is found on page 7, "Tales of Chivalry." Another illustration is found on page 38, "When the Frost is on the Pumpkin and the Fodder's in the Shock."

Both of these illustrations show the beneficial advantages and effects of using a border around a picture, for the purpose of more clearly defining the picture, and hiding or obliterating any overrun of colors, or ragged edges produced in printing the picture.

Other illustrations, showing the use of a border in connection with lithographic work, are found on page 20, "The Bride and the Fortune-teller"; page 32, "A Florentine Girl"; page 35, "A Safe Refuge"; and there are many other illustrations in the book, showing the use of a border.

The book also contains numerous illustrations in which the border is omitted and which show the beneficial effects and advantages of using a border for concealing any imperfections around the edges of the print. For instance, on page 8, "A Connoisseur," no border is used, and the edge shows, in places, an overrun of the red color; on page 12, "Knickerbocker Times"; and on the same page, "An Old Road in Virginia—Sunset," the prints show the effects of an edge having an overrun of color, which, in one case is yellow and in the other case, the Sunset, it is both yellow [454] and red. Numerous other instances might be pointed out, as that on page 17, opposite

(Testimony of Oscar W. Bond.)

page 16, "Among the Lilies," which shows to a very marked degree the bad effects of not using a border around the picture, the edges showing a red line at the top and bottom, and in the lower right-hand corner, which is entirely out of the edges of the picture, and would be concealed or obliterated if a border were used, as in the illustrations pointed out by me as having borders.

The Defendant's Exhibit Illustration of Lithographic Work shows a sheet having thereon various designs. Nearly all of the designs are inclosed within a border or ring, so as to bring out more forcibly the design, and at the same time obliterate any defect around the edges of the design in making the print.

This Exhibit Illustration of Lithographic Work is an excellent one in showing the beneficial effects and advantages of using the border around the design, as it contains two designs in which the border is omitted and which show the ill effects of the omissions, in that the edge of these two designs appear ragged and uneven. The designs referred to have, on the face, "Holman's Perfume, Holman, Chicago," and are found in the third row from the bottom of the sheet, and are the second and third designs from the left hand of the sheet. No better illustration of the effects and advantages from the use of a border around a design can be found than by comparing the designs having a border with the two designs without the border.

The evident purpose of using a border, in the ex-

(Testimony of Oscar W. Bond.)

hibits to which I have referred, is the same purpose as using a border around a transparent portion of an envelope; [455] and this purpose is obliterating or concealing or blotting out any ragged edge or imperfection of an edge around an illustration or design.

In my opinion, in view of the use, in the printing art, of a border encircling the design, picture or illustration, and serving the purpose of concealing, obliterating or blotting out ragged or imperfect edges, the use of a border or ring around a transparent section or part of an envelope would not involve invention, as it would be nothing more than the use of an old means for covering up or concealing the running, bleeding, or spreading of a material, so as to cause ragged or unsightly edges. It would not require invention, but only the employment of the skill of a printer, to use a border or ring around a transparent section or part of an envelope, in view of the old use, in printing, of a border or ring around the edge of an illustration, picture, or design, for the same purpose, of covering up or obliterating a ragged edge produced in printing, and corresponding to the ragged edge produced by the use of an oily compound or material in making a transparency.

The use of a border or ring around the transparent section or part of an envelope is analogous to and the same as the use of a border or ring around a picture, illustration, or design, in printing, and is for the same purpose—that of concealing ragged or imperfect edges; and, therefore, the use of a border or

(Testimony of Oscar W. Bond.)

ring around a transparent window in an envelope lacks invention, in my opinion.

Recess. [456]

Q. 15. I believe that, in the instances or examples of the printing of borders that you discussed in your last answer, the design, or picture, or work, and the border surrounding the same, were printed on the same side of the paper. What effect, if any, would this circumstance have, in your opinion, on the question as to whether invention or patentability were involved in the making of the envelope of the first Cohn patent sued on?

The question is objected to as being the testimony of counsel and not of the witness; that the question is leading; and that there has been no proper foundation laid; and calling for the mere opinion of the witness.

A. None whatever. The printing of the border on the outside is for the purpose of covering up or obliterating ragged edges and imperfections, which is the same purpose as contemplated by the border of the envelope of the first Cohn patent.

Furthermore, the specification of this first Cohn patent states:

“Usually, and perhaps preferably, the preparation and coloring matter are applied on opposite sides of the blank, the preparation on the inside and the coloring on the outside.”

It is clear from this statement that while Cohn preferred to apply the coloring matter and the preparation, as noted in the statement, it was not the

(Testimony of Oscar W. Bond.)

intention to confine the application to the inside for the preparation and the outside for the coloring matter, but to make the application as might be most convenient, using the coloring matter on the inside if desired, as well as the preparation. [457]

Q. 16. Do you find anything in the claim of this first Cohn patent which restricts the application of the coloring matter or border to the one side of the paper or the other, in your opinion?

Objected to as leading; and furthermore that the claim is the best evidence of its legal effect and scope.

A. There is nothing in the claim that in any way limits or restricts the application of the coloring matter to the inside or the outside of the paper.

Q. 17. I call your attention to the Tudor reissue patent, No. 8,514, of December 3, 1878; the Jacobson patent, No. 369,059, of August 30, 1887; the Eneas patent, No. 752,537, of February 16, 1904; the Johnson British patent, No. 1,119 of 1861; the Peace British patent, No. 5,823, of 1884; the Hole British patent, No. 746, of 1894; the Pescheux & Paulet British patent, No. 2,339, of 1894; the Leigh British patent, No. 21,711, of 1894; the Watts British patent, No. 7,955, of 1895; and the Smith & Browne British patent, No. 25,532, of 1901, and ask you to state what you may find disclosed in said patents, as to the use of borders around various things and kinds of work, and the object for which the borders are used in such patents. In considering each patent, you may state the bearing which you may consider that it has upon the question of the novelty of the

(Testimony of Oscar W. Bond.)

envelope of this first Cohn patent, or anything contained in it.

The question is objected to as leading; as no proper foundation laid; as indefinite; as irrelevant and immaterial to the art involved [458] in this suit; that the patents are the best evidence of their contents, mutual bearing and relevancy; and on the further ground that the U. S. patents referred to in the foregoing question have not been noticed to the complainant, as required by section 4920 of the Revised Statutes.

THE TUDOR 1878 PATENT.

A. The Tudor reissue patent relates to improvement in Ornamented Window Glass. The stated object of the invention is the production of ornamental designs, chiefly from paper, and imitating stained glass set in metallic sashes.

The invention consists in paper having opaque lines printed, painted, or stained thereon, resembling the outlines of leaden sash bars usually employed in the construction of stained glass windows, and applying transparent coloring to the spaces between the opaque lines, by printing, painting, or staining. It is stated that when the paper so prepared is oiled or coated, and filled in the pores with resinous substances, as by varnishing, it becomes, in the colored portions, more or less transparent and presents the pleasing effect of stained glass of the usual construction.

Plain paper, such as lithographic or writing paper, may be used, but paper more transparent is prefer-

(Testimony of Oscar W. Bond.)

able in carrying out the invention. It is also stated that the opaque lines and coloring may be applied on one or both sides of the paper. The prepared sheet of paper, after it is finished, can be applied to the glass, so as to be removable, or so as to be permanent. [459]

The drawing, forming part of the Tudor reissue patent, illustrates one form of carrying out the invention, and the opaque lines are indicated by the reference letters *b*, and the transparent colored spaces or figures are represented by the letter *c* on the drawing.

This Tudor reissue patent shows and describes a sheet of paper having thereon opaque lines with transparent spaces between the lines, and it is evident that the opaque lines present the transparent spaces with a clean edge and without any ragged appearance. One method of producing the transparent sections is by the use of a stain, and a stain usually is a liquid which penetrates or passes through any substance to which it is applied, and would naturally diffuse itself more or less if applied to paper so as to present a ragged and imperfect edge. Such an edge would be obscured or covered up by the opaque lines of the design.

Considering the invention of this Tudor reissue patent with the invention of the Cohn first patent, there is found, in both, the use of paper which can be more or less opaque, or more or less transparent, as may be preferred. The paper, in both cases, has formed therein transparent spaces or sections, made

(Testimony of Oscar W. Bond.)

so by the use of some suitable transparent material or compound. The transparent spaces or sections, in both inventions, are surrounded by an opaque border, so as to obscure or cover any rough edge or imperfections there may be on the outline of the transparent face or section.

It will thus be seen that the Tudor reissue patent is for a design made out of paper and having transparent [460] spaces with a border or ring of an opaque nature, being in this respect the same as the paper of the Cohn first patent, with its transparent space or section surrounded by an opaque border or ring.

The same novelty that is found in the Cohn patent, of a transparent section, with a border or ring of an opaque nature, is also found in this Tudor reissue patent.

THE JACOBSON 1877 PATENT.

The Jacobson patent relates to improvement in transparencies, and has for its object the production, at a moderate cost, of a transparency that can be used in place of stained glass or photographic transparencies.

The transparency of the Jacobson invention is composed of two or more copies of the same print or picture, on paper or any other suitable medium, rendered transparent and matched or registered together for the different copies to exactly coincide, and all of them together afford sufficient strength to the picture when viewed by transmitted light.

(Testimony of Oscar W. Bond.)

In making the colored transparency in accordance with the Jacobson invention, two or more copies of the design are carefully printed by any suitable or usual process of color printing, preferably using a somewhat soft and thick paper and making as strong a print as practicable. After which the paper or basis for the transparency is rendered transparent by filling or saturating its fiber with an oil or wax in any suitable or usual manner, as, for example, by dipping it in melted paraffine. It is stated that the paper, when so treated, becomes translucent, so that, when a sufficient number of layers of the same are viewed in transmitted light, they give, in the uncolored parts, the effect [461] of white or opalescent glass, and, in the colored parts, the effect of a clear stained glass of the same color.

It is also stated that lines, to indicate the leading of the window, may be printed onto the design in black, which would, as a matter of course, furnish an opaque border around the space inclosed within the lines of the opaque border.

The drawing, forming a part of the Jacobson patent, shows, in Figure 1, the complete transparency, and, in Fig. 3, a face view of one of the copies of the design. It is to be noted that, in Fig. 1, the design is brought out in better relief than in Fig. 3, owing to the use of two or more sheets like Fig. 3, superimposed one on the other, as intended by Jacobson.

It is evident that the black lines in Fig. 1 will furnish an opaque border around the spaces shown

(Testimony of Oscar W. Bond.)

in white within the black lines, which spaces are transparent.

The invention of this Jacobson patent discloses the use of paper, portions of which are rendered transparent, and such portions or spaces are inclosed within border lines of an opaque nature, with the result of producing a transparent surface of different colors, with the transparent spaces separated and made clearly defined by the use of opaque border lines. .

Considering what is disclosed in this Jacobson patent with what is found in the Cohn first patent, it is seen that, in both patents, paper is used as the basis of the device; that, in both, transparent spaces or sections are made in the paper; and that, in both, the transparent spaces are defined and made perfect by the use of opaque lines. It is self-evident [462] that if the material or compound employed by Jacobson was of a nature to form ragged edges or an imperfect edge, the defect would be cured by using the opaque lines, corresponding in this respect to the use of an opaque border ring, as in the first Cohn patent.

It seems to me that any novelty existing in the Cohn first patent, for a transparent space made in a sheet of paper, with a border or ring of an opaque nature, is likewise found in the Jacobson patent.

THE ENEAS 1904 PATENT.

This Eneas patent relates to inclosing devices, such as wrappers or the like.

The wrapper or inclosing device of the Eneas pat-

(Testimony of Oscar W. Bond.)

ent is one in which a transparent panel, preferably of a sheet of flexible material, is employed for the purpose of observing the opposing portion of the book, back of the panel.

It is stated that the transparent panel may be secured to the cover body in any manner suited to the substances employed, preferably by cementing or stitching the overlapping faces of the panel to the wrapper. One form of attachment for the panel to the body of the wrapper utilizes the overlapping edges of the book cover as a reinforcing strip for the panel to reinforce and strengthen the edges thereof. Another form of making this attachment of the panel to the body of the wrapper employs additional reinforcing strips, secured over the edges of the cover, or, if desired, the panel may terminate at the reinforcing strips, so that the latter will bind and protect the panel edge from [463] injury. The construction of using an additional reinforcing strip is shown in Fig. 1 of the drawing, and is represented by the reference letter *d*, and this strip *d* surrounds the edges of the transparent panel *c*, and forms, in effect, a border or ring, which would serve to define the outline of the panel, and would cover up any rough edge, if the panel had such an edge.

Considering this device of the Eneas patent with the device of the Cohn first patent, both may be properly termed wrappers. The transparent sections or parts of the Eneas wrapper is not formed with the body of the wrapper; while in the Cohn first patent the transparent part is a unity with the

(Testimony of Oscar W. Bond.)

wrapper. The transparent space or part in both wrappers is surrounded by a border, which serves to define the outline of the transparent panel, and serves to cover up or obscure any rough edge which may be on the transparent panel.

THE JOHNSON 1861 BRITISH PATENT.

This Johnson British Patent relates to show boards or tickets; and the stated object of the invention is to produce a show or window tablet which shall be visible both by day and night and present the appearance of stained glass.

According to the specification, the required design is printed in colors, by lithographic, typographic, or other means, upon paper, cotton, silk, or other material. The material so printed is then rendered transparent, by varnish, gum, size, or other suitable medium. The finished tablets may be used as produced, or they may be placed loosely behind glass, or applied to the glass, and be made to adhere thereto by means of varnish, gum, or other transparent adhesive material. [464]

It is stated that after the required design has been printed, upon paper or other suitable material, in colors,—some of the colors being printed twice or oftener—in order to give the required solidity to more closely imitate stained glass when finished—and for this purpose, that is, imitating stained glass, a boundary line is formed around the edges of all the letters or other parts of the design, by printing in size or other adhesive material and applying metal-

(Testimony of Oscar W. Bond.)

lic leaf or bronze powder thereto, so as to imitate what is termed the "leading" in stained glasswork. It is stated that this "leading" effect may be produced, by printing the boundary lines or "leading" in any very opaque color or substance.

This Johnson British patent discloses a device of a transparent nature; that is, one having transparent spaces or sections in colors, and these transparent spaces or sections are inclosed with a boundary line or border, applied by printing the same in any opaque color or substance, so as to inclose the transparent space or section; and the material used for producing the transparency is paper, among other things.

Considering this Johnson British Patent, and the device disclosed therein, with the device of the first Cohn patent, it is seen that both employ paper in the production of the device; that both form, in the paper, transparent sections or spaces; and that both employ a border or ring inclosing the transparent space or section, so as to more clearly define the same; and it is evident that if an oily [465] compound or material were used in carrying out the Johnson invention, for printing or making the transparent space or spaces, in such case the border line of an opaque nature, such as used by Johnson, would serve to obscure or cover up any rough edge or imperfect edge produced by the use of the material for making the transparent space or section.

It seems to me that any novelty which is found in the device of the Cohn first patent, as to the use of a

(Testimony of Oscar W. Bond.)

transparent space or section formed in the paper, with a border or ring of an opaque nature, is likewise found in the device of the Johnson British Patent.

Adjourned until Saturday, December 10, 1910, ten o'clock A. M.

Chicago, Illinois, December 10, 1910.

Parties met pursuant to adjournment. Present as before.

(Answer continued:)

THE PEACE 1884 BRITISH PATENT.

This Peace British Patent relates to improvements in cases or wrappers for needles, fish-hooks, and other similar articles.

The object of the invention is to allow needles and other similar articles to be seen without exposing the articles to the deleterious action of the atmosphere. The invention is carried out by the application of transparent or diaphanous material, such as talc, gelatine, or other similar suitable [466] material, the preference being materials that are elastic, though nonelastic materials, such as glass, may be used, if desired.

It is stated that preferably the transparent material is applied to the front side only of the case or wrapper, and the application is in such manner as to leave a strip or border of the paper, or other substance of which the case or wrapper is made, around the edges of the transparent material, forming a frame, which may be either left plain or may be ornamental.

(Testimony of Oscar W. Bond.)

The drawing, Fig. 1, shows a construction in which A is the transparent material; B, the front of the wrapper, and around the transparent material is a border, by which the edges of the transparent material will be covered or obscured, so as not to present any ragged edge for the transparent section or part of the wrapper. The remaining figures of the drawings show, in each instance, a border C, surrounding the transparent material, and by which the edges of the transparent material are covered or concealed.

This Peace British Patent discloses a wrapper having, in its front face, a transparent section or part, which, however, is not an integral part of the material from which the wrapper is made. The patent also discloses the use of a border surrounding the transparent window, or portion of the wrapper which serves to cover and conceal the edges of the transparent material.

Considering this Peace British Patent in connection with the Cohn first patent, the wrapper of both patents has a transparent section or window, formed in one case of a separate piece, as in the Peace patent, and in the other case formed as an integral part of the material, as in the Cohn patent. [467] The window or transparent section, in both cases, has the edges of the transparent section surrounded by a border, which in the British patent is the wrapper itself, and in the Cohn patent is a coloring substance; but in both cases the border serves to bring out the contour of the transparent section or window

(Testimony of Oscar W. Bond.)

and to conceal any imperfections or roughness for the edges of the transparent section or window.

The novelty of covering or obscuring the edges of a transparent section or window, in a wrapper, is found in the Peace British Patent, the same as in the Cohn first patent, but attained by a border of a different character than the border printed around the transparent section of the envelope of the Cohn first patent.

THE HOLE 1894 BRITISH PATENT.

The invention of this Hole British Patent relates to an improved Coin Bag.

The object of the invention is to construct a coin bag in such manner that the contents can be ascertained by a glance. The coin bag, in order to carry out the object of the invention, is made of paper or other suitable material which is perforated by punching or otherwise making holes on one or all sides, which holes are located at any desirable distances apart, and are of a size so that the smallest coin cannot fall through the holes.

It is stated that, by reason of the perforations, the nature of the contents of the bag can be easily and quickly ascertained, and if necessary the observation can be aided by using black or other colored lines on the exterior of the bag, which would form a relief to the color of the coins the bag contained.

[468]

The drawings accompanying this Hole British patent show a construction in which the holes are

(Testimony of Oscar W. Bond.)

indicated by the reference letters *b*, and the defining lines in black are represented by the reference letter *c*, and these lines extend across the face of the wrapper and surround the perforations. This Hole British Patent shows the use of black or other lines around an opening or perforation, for the purpose of more clearly defining the outline of the holes or perforations.

Considering what is disclosed in this Hole British patent with what is disclosed in the Cohn first patent, both patents utilize a border or a line by which the outline of the opening in the wrapper is more clearly brought out and defined.

THE PESCHEUX AND PAULET 1894 BRITISH PATENT.

This Pescheux and Paulet British Patent relates to improvements in Pattern Cards, for displaying and illustrating the effect of dress material.

The object of the invention is to provide means for illustrating, upon reduced scale models, the general effect and sample material or pattern would have when made up into garments when worn upon the person.

The invention is carried out by using a sheet of transparent material, such as glass, mica, celluloid, gelatine, or any other suitable transparent substance, and printing or otherwise depicting thereon a figure. For example, a man or woman dressed in garments of any required or fashionable style, and showing the beautiful shading where desirable, as

(Testimony of Oscar W. Bond.)

usual in ordinary tailors' pattern cards. Such parts of the figure which are not to be dressed or covered with the [469] material of the clothing, such as the head, hands, feet, etc., are blocked out with any suitable colors, preferably a more or less natural representation, and any other extraneous matter may be shown, but is to be similarly blocked out. It is stated:

"The whole of the remaining part of the sheet is covered with opaque or nontransparent material, such as gold or other metallic leaf, colour, or the like, so that the shaded costume of the human figure alone remains transparent."

The drawings, forming part of this British patent, show in Fig. 1 the outline of a lady in riding habit and mounted upon a horse, and in Fig. 2 the outline of a gentleman dressed in a suit of clothes of approved style. The description of these figures states:

"These figures are suitably shaded in black or any dark tint as shown so as to show off the costume. The diagonal lines covering the faces, gloves, collars, boots, etc., indicate that those parts are not transparent but are suitably coloured upon the sheet A. The horse in Fig. 1 or any other added matter is similarly coloured or rendered nontransparent. The rest of the sheet is blocked out with colour or material of suitable opacity as indicated by the horizontal lines. Thus the only parts of the sheet left transparent are those parts of the human figure

(Testimony of Oscar W. Bond.)

which are to be covered with the clothing of the sample material to be illustrated thereupon."

It is also provided that, instead of using a transparent material, a solid and nontransparent sheet may be used, cutting away only such part or parts as required for the human figure, and covering the space or spaces thus formed with transparent material, on which the figure is depicted.

The figure to be displayed is transparent, and is shown in the drawings by the portions which are left entirely white. This Pescheux and Paulet patent illustrates and described a sheet, preferably of transparent material, on which the figure to be illustrated is blocked out and defined by [470] a transparent section or part surrounded by a border or frame of opaque material, so as to clearly define and bring out the outlines of the figure against which the material for the garment is to be displayed.

Considering the invention and its novelty, as found in this Pescheux and Paulet British Patent, with the invention and novelty disclosed in the Cohn first patent, the British patent has therein the invention and novelty of the Cohn first patent, in that it has a sheet of transparent material, with such portions thereof as are not wanted for the design made opaque, so as to clearly define and bring out the outline of the figure desired, corresponding in this respect to the use of an opaque material around the transparent section or portion, as found in the Cohn first patent. Both patents show the use of an opaque border, for the purpose of bringing out more definitely and

(Testimony of Oscar W. Bond.)

clearly the outlines of the transparent section or part of the sheet, and in both the border of opaque material serves as a means for covering up or obscuring any irregularities or imperfections of the transparent portion, around the edges of such portion.

THE LEIGH 1894 BRITISH PATENT.

The invention of this Leigh 1894 British Patent relates to an improved device for exhibiting and setting off dress material.

The object of the invention is to show to the eye how a given dress material will look when it is made up and worn. The object of the invention is attained by means of a portable sheet having marked thereon the outline of the human figure, or some portion of it, which outline, as concerns the [471] head, neck, hands and feet, is preferably finished in color, and the balance of the sheet, outside of the said outline, is opaque, with the surface within the outline transparent, and lightly lined and shaded to indicate buttons, pockets, and the like, and to show up the contour. The device is used by laying it on the material.

It is stated that the material from which the device is made must be naturally transparent, or at any rate capable of being made transparent, and celluloid is mentioned as a material which would meet all the requirements of the invention, for which reason the device is preferably made of celluloid, though any material may be used which is suitable for the purpose of the invention.

It appears, from the description and drawings of this Leigh British Patent, that the sheet is divided

(Testimony of Oscar W. Bond.)

into two portions, one of which, indicated by the reference letter *a*, is transparent, and the other portion of which, indicated by the reference letter *b*, is opaque. This opacity is represented in the drawing by the black portion of the sheet of drawings, and the transparent portion is shown by the white section of the drawings. It is stated in the specification that preferably the opacity of the sheet of material shall be secured without dullness of color, and for that reason the sheet outside of the transparent outline is covered with a gold color, which is laid on the back of the sheet.

It is stated that the portion of the sheet presenting the outline of the figure shall be transparent, and, if celluloid is used, the necessary transparency is already there; but if, on the other hand, "the material of the sheet is [472] opaque normally, such within portion *c* must be made transparent." It is also stated that care should be taken, when the opaque portion and the transparent portions are of distinct material, that they are easily and well joined along the outline.

This Leigh British Patent discloses the employment of a sheet which can be entirely of a transparent material, having portions made opaque, so as to clearly present an outline of a transparent nature; or the sheet may be of an opaque character and the transparent section produced thereon, so as to present the required outline in a transparent form or section.

Considering this Leigh British Patent in connec-

(Testimony of Oscar W. Bond.)

tion with the novelty of the Cohn first patent, it is found that in both there is a section or part which is made transparent; that in both this transparent section or part is inclosed within an opaque border; that in both the opaque border serves to bring out and define the outline of the transparent section or part of the sheet; and that, if the transparent section of an opaque sheet used in the Leigh British patent was made by the use of a compound or material which would tend to spread and form a ragged edge, such edge would be obscured or concealed by the opaque portion of the sheet surrounding the transparent section or part.

It, therefore, seems to me that the same novelty exists in this Leigh British patent as found in the Cohn first patent, as regards a transparent section with a surrounding border or portion of an opaque nature.

THE WATTS 1895 BRITISH PATENT.

This Watts British Patent relates to the packing or making up of tobacco or other goods in packets, cases, [473] cannisters, or the like.

The object of the invention is to enable the goods inside the package, case, or wrapper, to be visible from the outside.

The invention is illustrated by drawings, and the first four figures of the drawings illustrate the wrapper A, having a hole or opening B, behind which is placed a sheet C of gelatine, celluloid, or other suitable transparent, or semi-transparent material, by which a window is formed in the packet, enabling the

(Testimony of Oscar W. Bond.)

contents to be examined without opening the package itself. Fig. 5 illustrates the invention in connection with a cardboard box or case. Fig. 6 illustrates the invention applied to a cigar-case. Figs. 7 and 8 illustrate the invention in connection with tin boxes. In all cases, however, an opening is formed in the body of the casing, which opening is closed by a sheet of gelatine, or other suitable material, applied back of the opening, so as to form a window for inspecting the contents.

This Watts British Patent discloses the use of a transparent section or window surrounded by opaque material, through which transparent section or window anything there behind is visible. The outline of the transparent section or window is defined and made clear by the surrounding opaque material.

Considering the novelty disclosed in this British patent with the novelty of the Cohn first patent, it is found that in both a wrapper is employed having a transparent section or window, and in both the transparent section or window is outlined and defined by the use of an opaque material surrounding the section or window. [474]

THE SMITH & BROWNE 1901 BRITISH PATENT.

The invention of this Smith & Browne British Patent relates to a combined opaque and transparent tablet, poster, label, ticket or sign, for advertising purposes, and for displaying public notices.

The invention consists of printing, or applying on paper by hand or mechanical means, a black ink or

(Testimony of Oscar W. Bond.)

color, or inks and colors, on the reverse or negative surface of the aforesaid paper, to that surface on which the advertisement or public notice is printed and displayed.

The specific purpose of rendering opaque and dense certain and predetermined parts of the advertisement or public notice, by printing or applying the black ink or color, is to enable certain other and predetermined parts to be made transparent by means of spirit varnish, and these transparent parts are exposed or left unprotected, owing to the absence of the colored portions, as the ink or colors are not printed or applied to the predetermined transparent part of the reverse or negative surface of the aforesaid paper, to that surface on which the advertisement or public notice is printed and displayed.

It is stated that the application of the spirit varnish is for the specific purpose of rendering transparent only such parts of the advertising matter as desired and intended to show and become brilliant when the paper on which is printed or displayed the advertising matter is placed before artificial light.

This Smith & Browne patent discloses the employment of a sheet of paper, certain parts of which are rendered [475] transparent, and the remaining parts of which are rendered opaque by the use of an opaque material, such as black ink or color, the resultant effect being a sheet of paper having a transparent section or part surrounded by an opaque material, by which the transparent section or part will be defined and clearly pointed out, and undoubtedly

(Testimony of Oscar W. Bond.)

the black ink or color employed around the transparent section or part would serve to cover up or obscure any ragged edge of the transparent section or part made by the use of the spirit varnish employed for obtaining a transparent effect.

Considering the novelty disclosed in this Smith & Browne British Patent with the novelty of the first Cohn patent, it is found that in both a sheet of paper is employed; that in both a section or part of the sheet of paper is rendered transparent by the use of a proper compound or material; that in both other parts of the sheet of paper surrounding the transparent section or part is rendered opaque by printing or applying on the paper a black ink or color, or inks and color; and that in both the transparent section or part is defined and made pronounced, and any ragged edge of the transparent part would be obscured or covered up by the opaque part or border surrounding such transparent section or part.

Q. 18. I notice that the copy of this Leigh 1894 British Patent, in the upper right-hand corner of the first page, has apparently a rubber stamp applied thereto, containing the words "No Patent Granted on This Application." Do you know anything about the origin or purpose of those words stamped on the copy before you? [476]

Objected to on the ground that the patent paper referred to is the best evidence of its contents, and that the question calls for a construction of the British Patent Act; and the mere legal conclusion of the witness.

(Testimony of Oscar W. Bond.)

A. I do not. I do know, however, that a copy of this patent, on file in the Public Library of Chicago, does not have thereon an imprint of any nature whatever. I personally examined the bound volume of British patents, containing a copy of this Leigh patent, and the copy in such bound volume is just the same as the first page of the copy before me, without the stamped statement found on the upper right-hand corner.

I move that all that part of the answer, after the first three words, "I do not," be struck out as not responsive to the question.

Q. 19. I believe you made the examination in the Public Library of this city that you refer to, at my request, to see whether or not the stencil mark, or whatever it is, on this printed copy before you, was also on the copy in the Public Library?

The question is objected to, if it is designed to impeach the authenticity of the Leigh patent paper referred to. The understanding was, between counsel of the parties, that uncertified printed Patent Office copies distributed by the Patent Office in this [477] or other countries might be received in evidence as though certified. I will, therefore, ask counsel if this Leigh paper is such a paper as was printed and distributed by the British Office.

Counsel for complainant has a similar copy, similarly stamped, received from the British Patent Office. If this copy, referred to by counsel for defendant, is an authentic publication, then any evidence that might be elicited by the question as pro-

(Testimony of Oscar W. Bond.)

pounded, or by similar questions, is beside the issue.

By Mr. BANNING.—Defendant's counsel states that the copy of the Leigh patent offered in evidence is such a printed copy as is printed and distributed by the British Patent Office, and that when he received the copy shown to the witness it contained the stencil or stamp on it with the words quoted in the question to the witness; that in order to ascertain whether all copies printed and distributed by the Patent Office contained such stamp or words, he requested the witness, when he turned over the patents to him, for his study and preparation to testify as a witness, to examine the printed copy of such patent as contained in the Public [478] Library, at Chicago, to see whether it contained a similar stencil or stamp; that he is not in any way endeavoring to impeach or question the authenticity of the Leigh patent, but simply desired to have all the light thrown on the matter that was available; and that he considers the stencil or stamp now appearing on the printed copy as of no materiality or importance, as such words could not in any way, that he sees, militate against the printed copy of the patent as a publication.

A. Yes, I made the examination referred to, at your request.

Q. 20. About how long, to your knowledge, have printed copies of British patents been received by and exhibited at the Public Library in Chicago, for the examination of the public, or any one that might desire to see them; and how long have you been in

(Testimony of Oscar W. Bond.)

the habit of examining them there?

Objected to as irrelevant and immaterial.

A. I could not say positively how long back copies of British patents have been received and placed on file for examination of the public, at the Library in Chicago. To the best of my recollection, I examined British patents at the Library in Chicago, as early as 1875, at least. I have examined copies of these British patents nearly every year, from the time of my first examination up to the present time, both here in the Library and in the Patent Office in Washington. [479]

Q. 21. From your examination of British patents, in the Public Library of Chicago, about how long after such patents are issued in Great Britain, have you found them on file and ready for examination by the public in Chicago?

Same objection.

A. I have no direct knowledge as to how late or how soon after the bound volumes are produced in Great Britain that such volumes are received in Chicago. I do know that I have asked for and received printed volumes for the first of the year within four months thereafter. That is to say, I have asked for printed volumes, say in April or May, for an issue of British patents in January or February of the same year, and have obtained the volumes.

Q. 22. From your experience in obtaining the printed copies of English patents in the Public Library here, for about how long, in your opinion, has the printed copy of this Leigh British 1894 Patent

(Testimony of Oscar W. Bond.)

been available for examination in the Public Library of Chicago?

Same objection; and furthermore as no proper foundation laid.

A. I would say as early as September, 1895.

Recess.

Q. 23. Referring to Figure 2 of the first Cohn patent, what do you understand is represented by the numeral 2, and what represented by the white surface or portion of the envelope outside of the diamond-shaped figure in which the numeral is placed? [480]

Objected to, as the patent is the best evidence of what it illustrates and describes.

A. The numeral 2, as I understand it, represents that portion of the face of the envelope having or embracing the transparent section or window. The white surface which surrounds this transparent portion or window indicates that the body of the envelope, outside of the transparent portion or window, is opaque, and made so by being imprinted or colored so as to give definition to the window opening and obliterate signs of creep from the transparency-producing preparation.

Q. 24. In Fig. 2, what part do you understand is to be considered or can be described as the border?

A. All that portion or face of the envelope lying outside of the lines defining the diamond-shaped transparent section or portion of the window, which portion extends to the edges of the envelope on all four sides.

(Testimony of Oscar W. Bond.)

Q. 25. Do you mean to be understood as considering that the border of this first Cohn patent may cover the entire face of the envelope, with the exception of the transparent window? A. Yes.

Q. 26. If you see anything in the specification which leads you to such an understanding, please refer to it, and quote the same in your answer.

A. The specification, in describing Figure 2, states: [481]

“Fig. 2 represents an envelop with a different shaped opening from that of Fig. 1 and in which the entire face of the envelope around the window is assumed to have been imprinted or colored to give definition to the window opening and obliterate signs of ‘creep’ in the transparency-producing preparation.”

Again, in speaking of the manner of applying the color matter, it is stated, in column 2 of the specification, line 73, as follows:

“This coloring matter may be applied solid over the face of the envelope around the window, as in Fig. 2.”

Q. 27. If the paper composing the face of the envelope be entirely covered with opaqueing or coloring matter, “applied solid,” to use the words of the specification of the first Cohn patent, with the exception of the transparent section or window, in what respect, in principle, would there be any difference in such paper, in your opinion, over the paper when paper be used, shown in the drawing in this Leigh 1894 patent, for example?

(Testimony of Oscar W. Bond.)

Objected to as leading; that the evidence shows that there was no such patent ever issued; and as it is immaterial and irrelevant to any of the issues in the present case.

A. No difference in principle whatever.

Q. 28. In my last question, I referred to the Leigh patent as an illustration or example merely. You may make your answer applicable to other patents discussed by you, as well, or such of them as may serve to illustrate the matter under inquiry.

A. In addition to the Leigh British patent, referred to in the preceding question, the Pescheux and Paulet patent shows a transparent section or portion, with [482] the remainder of the sheet rendered opaque by color matter.

By Mr. TOWNSEND.—I move that the answer be struck out, as the Pescheux and Paulet patent obviously bears no relation to the envelope art as represented by the patents in suit.

Q. 29. If the border around the transparent window of the first Cohn patent be in the form of a narrow ring, as shown, for example, in Figure 1 of the patent, in what respect, in principle, would there be any difference in such paper, in your opinion, over the paper shown in the Tudor and various other of the patents that you have considered and discussed?

Objected to as incompetent, irrelevant, and immaterial.

A. No difference whatever in having the transparent section or window surrounded by a defining border or ring.

(Testimony of Oscar W. Bond.)

Q. 30. If we take this Tudor patent, for instance, and stain the spaces between the heavy black lines, as described in the specification of such patent, what would there be to cover up or conceal the meeting edges of the different colored stains in adjacent spaces, or to define or give definition to the several spaces?

The question is objected to as assuming something not apparent from the record; as involving a hypothetical reconstruction of the Tudor patent; and furthermore as irrelevant and immaterial to any of the questions here involved. [483]

A. The opaque lines by which the to-be colored spaces are divided off and separated one from the other; the to-be colored spaces being the spaces in white on the drawing of the Tudor patent.

Q. 31. In view of the old and common practice in the printing art, for printers to print borders around their work, where they thought them desirable, to cover and conceal any running of the ink, or unsightly edges, and to give a finished appearance to their work, to which I called your attention yesterday; in the color picture printing art, to cover and obliterate irregular or objectionable edges, due to the careless making or registration of the color plates, or the overlapping of the colors in printing, or from other causes, and to give beauty of finish to the pictures, to which I called your attention yesterday; in the lithograph printing art, to conceal and cover irregular and ragged edges, and give definition of outline to the inclosed picture or label, and ornamental

(Testimony of Oscar W. Bond.)

finish to the same, to which I called your attention yesterday; and in the use of printed borders, as disclosed in the patents you have considered and discussed, applied to many articles, to give definite outline to desired portions or spaces, and to cover and conceal whatever might otherwise appear on or through the paper, where the borders were printed or placed; not to specifically mention or consider the use of borders to cover ragged or unsightly edges, such as the borders printed around pictures in almost any illustrated book, the borders or "mats" around photographs and framed pictures, the borders around the edges of wallpaper as applied to rooms, the borders or "casings" around the windows of houses, and other common uses of borders, of which a court [484] may be presumed to take judicial notice; what, in your opinion, based on your thirty years or more of experience with patents and inventions, was the character of the act which Cohn performed when he printed a border around the transparent portion of a piece of paper intended to form the transparent window of an envelope, to obliterate or conceal the effects or tendencies of the oil to creep into the surrounding paper, in view of the Brown 1862 patent, which discloses, as I understood you to say, while discussing it, a one-piece transparent window envelope, but without a border printed around the transparent window?

The question is objected to for multifariousness as involving an aggregate of questions; as leading; as calling for the opinion of the witness in a variety of

(Testimony of Oscar W. Bond.)

arts totally and wholly unrelated to one another, and in which arts the witness has shown no qualification entitling his opinion to weight; and furthermore, if the question is segregated into its many parts and branches, still all of these parts and their answers to them, singly or collectively, are irrelevant and immaterial.

A. In view of the Brown 1862 patent, which discloses a one-piece transparent window envelope, not inclosed within a border, the placing or printing of a border of opaque nature around such transparent window would be, in my [485] opinion, the natural act of a printer or anyone familiar with the printing or placing of a border around a picture or any other representation, for the purpose of more clearly defining and bringing out the representation, and concealing any defects there might be around the edges of the picture, design, or illustration. It would be nothing more than the act of a skilled operator familiar with the practice in similar cases, and not arising to the dignity of invention, as it would be done without the employment of any inventive skill. It would belong to the same category of work as that of a carpenter who desires to conceal or obscure the ill effects or the bad appearance of a wall at the edges around an opening or adjacent to a post, to do which he would naturally use a covering strip of wood, or other material, and this without the use of anything more than his mechanical skill. It would be like the act of the framer of a picture or lithograph, who, desiring to conceal an imperfect edge, or a defective edge, would

(Testimony of Oscar W. Bond.)

do so by placing around the picture a matting or covering subserving the same office as a border in blotting out or obscuring the defect.

This placing of a border of opaque material around a transparent section made in a sheet of paper, would be the natural act of anyone familiar with the printing art, or with the decorative art, and would be done without the employment of the inventive faculties, and by the natural knowledge of the art in obscuring or blotting out defects around a picture, illustration, or any other design.

Q. 32. If you know how the oily preparation and the surrounding ring or border are applied to envelopes [486] such as shown and described in the first Cohn patent, and such as are in controversy in this case, I will ask you to state to what art recourse is had in the application of such oily preparation and the rings or borders?

The question is objected to, as the patent shows for itself how the preparation and ring may be applied, and the patent also shows that the invention also pertains to the art of envelopes.

A. The application of the transparency-producing material and the border is had by means of subjecting the sheet of paper to the action of a proper form or die, which will give the outline the transparency and imprint the ring or border around such transparency. This operation would probably belong to the printing art.

Q. 33. And in what kind of machines are these dies used, for applying the oily preparation and the

(Testimony of Oscar W. Bond.)

border or ring?

By Mr. TOWNSEND.—Is the witness testifying from what he finds in the Cohn patent, or from what he knows as to the manner in which the Transo envelope is made by Mr. Regenstein's company?

A. Printing-presses.

THE SECOND COHN PATENT SUED ON.

Q. 34. Please look at the Cohn patent sued on, No. 824,908, of July 3, 1906, applied for January 17, 1905, for improvements in envelopes, which, for convenience, I will [487] hereafter refer to as the second Cohn patent, since it was the second one applied for the two Cohn patents sued on, and state whether you have studied the patent, so as to understand the thing or article that is described and claimed in said patent.

A. I have examined and studied the patent referred to in the question, and understand the nature of the device or thing shown and described therein.

Q. 35. Please tell us, in your own language, what you understand to be the thing or article described and claimed in this second Cohn patent.

A. The thing or article shown and described in this second Cohn patent is an envelope, having a transparent face or window, so designed and associated with descriptive matter as to offer novel and unique possibilities for advertising.

The envelope is formed by taking a blank sheet of paper, or an envelope blank, and treating a portion thereof with a compound or preparation of a nature to give a transparent effect to the treated portion, and then applying to the remaining portion, or part of

(Testimony of Oscar W. Bond.)

the remaining portion of the blank which forms the face of the printed envelope, some suitable opaque coloring matter which surrounds the transparent section or portion. The transparent section or portion enables the addressee's name to appear through it, and, combined with this feature, is the idea of changing the form or outline of the transparent portion to correspond with the trade mark, design, or advertised object of the party using the envelope. The number and shape of the transparent section or portion is almost limitless, but [488] in each case the outline is to be one which will disclose the form of the article desired to be represented, as, for instance, an oyster, a fish, a cake of soap, a biscuit, an article of hardware, or any other article of manufacture and sale. In other words, the transparency of the transparent portion or section of the envelope is to conform to and present the configuration or outline of any desired article, in and by the transparent window or section itself. This outline, whatever its character may be, is rendered more defined and characteristic by the application of the colored border or ring or opaque portion of the envelope, by which the characteristic of the window is made more definite and pronounced, and any rough edge of the window or outline is blotted out or obscured.

This window or transparent section, of a character representing any desired article, may be employed by itself and unassociated with any descriptive matter or words, or it may be associated with some word or words associated with or relating to the pictorial

(Testimony of Oscar W. Bond.)

feature, so that every one seeing the envelope is confronted with a striking advertisement of a particular brand of goods of a particular dealer.

It is this feature, of making a window in the face of an envelope, and rendered transparent by any suitable means, and of a shape to correspond with the shape of an article, and which is surrounded by an opaque border or ring, and associated with or unassociated with other marks, that forms the subject matter of the invention of this second Cohn patent.

Q. 36. In what particular physical feature does the envelope described and claimed in the second Cohn patent differ from the envelope described and claimed in the first Cohn patent? [489]

A. In having the transparent section or window formed to resemble the outline of some article with which the user of the envelope deals, instead of having the outline of the transparent section or window a plain figure, without any resemblance to an article of trade, or commerce, or manufacture.

Q. 37. This second Cohn patent, like the first one, speaks of a "window," or "window-opening," and of a "border." What do you understand to be the parts respectively of the envelope of this second Cohn patent so designated?

A. The same parts so named in the first Cohn patent. That is, the "window" or "window-opening," is that portion of the face of the envelope which is rendered or made transparent; and by "border" is meant that portion of the envelope which is rendered opaque, whether such opaque portion be a ring, or be

(Testimony of Oscar W. Bond.)

the entire surface of the envelope outside of the transparent section or window.

Q. 38. Please refer to and quote in your answer any statement that you may find in the specification which justifies you in stating, as you did in your last answer, that the portion designated as the "border" may be the entire face of the envelope, with the exception of the transparent window.

A. The specification of this second Cohn patent, column 1, line 33, after specifying how the compound or preparation for giving a transparent effect is applied, states:

"The remaining portion or a part of the remaining portion of the blank which forms the face of the finished envelope A is then imprinted with a suitable opaque coloring-matter."

Again, the second column, page 1 of the specification, beginning with line 61, says: [490]

"This coloring-matter may be applied solid over the face of the envelope, or it may take the form of graduated tints or of being shaded, or the representation of a surrounding border, or cloud effect, as indicated at 3 in Fig. 1."

Again, this same column 2, page 1 of the specification, line 90, says:

"Fig. 2 shows a cigar in transparency and the words 'Blanco cigar' in nontransparency on colored opaque field."

Adjourned until Monday, December 12, 1910, 10 o'clock A. M.

(Testimony of Oscar W. Bond.)

Chicago, Illinois, December 12, 1910.

Parties met pursuant to adjournment. Present as before.

Q. 39. Where the entire surface of the face of the envelope is made to constitute the border, by having the coloring-matter "applied solid over the face of the envelope," as stated in the specification of this second Cohn patent, with the exception of the transparent window, in what way does Cohn add additional matter, if any, to connect the shape of the window with the goods or manufacture of any particular desired party?

A. In no other way, except the outline presented by the transparent window.

Q. 40. For what purpose does Cohn, in the drawings of his second patent, and in his specification, show and describe various words on the face of the envelope?

A. By printing or otherwise placing the word or words on the non-transparent or colored opaque portion [491] or field of the envelope, he indicates the name of the party using the envelope, and any advertising matter that may be desired, thereby creating a most striking advertisement to attract attention in connection with the transparent window illustrative of some article of manufacture of trade or a trade name or mark.

Q. 41. Taking the last paragraph in the first column of the second page of this second Cohn patent, where the patentee says that "generally" the window opening, by itself, alone and unassociated with any

(Testimony of Oscar W. Bond.)

descriptive matter or words, forming an essential feature of the trademark, would have very little significance as referring to a particular manufacturer, and his further statement in the same paragraph that "when" there is associated with the window opening of characteristic or peculiar design a trade name or some word or words "usually" associated with or relating to the pictorial feature, every one seeing the envelope is confronted with a striking advertisement of a particular brand of goods of a particular merchant or firm, what is your understanding as to the necessity or non-necessity of *always*, instead of "generally," using words or printed matter on the face of the envelope, to indicate the particular merchant or firm to whom the trademark represented by the contour of the window refers?

The question is objected to as an incorrect statement, in its latter portion, of the two passages above quoted from said paragraph; that it is irrelevant and immaterial, because the patentee fully explains the construction, and the reason for the construction, followed by the patentee and [492] also by the defendant in this case; and it is an attempt to construe a written instrument, which is in no way ambiguous; and as ambiguity has not been set up in the answer as a defense.

A. My understanding of the statements, in the last paragraph, in the first column of the second page of this second Cohn patent, is that as a general thing the outline presented by the transparent window is

(Testimony of Oscar W. Bond.)

not sufficient for the purpose of indicating the manufacture, and, therefore, in order to set forth clearly the manufacture, Cohn intended to use, in association with the outline presented by the transparent window, the trade name or similar indicating symbol, by which the name of the manufacturer would be presented, so as to indicate, without doubt, by whom the article was made or dealt in, and thereby have the name of the merchant or firm or other party presented on the envelope in addition to the design of the transparent window. This, as I understand it, was to be done in all cases where the name of the party was necessary in order to indicate the user of the envelope, or the party by whom the envelope was used, thereby making a very striking advertisement, which would not be the case if the outline of the transparent window alone were used.

Q. 42. If you find any statement in this second Cohn patent as to what constitutes the essential feature of the invention of such patent, please read the same into your answer.

A. In the second column of page 1 of the specification, [493] after stating different designs which may be presented in outline by the transparent window, the specification states, line 103:

“The essential feature in this connection is a window which in general outline is characteristic of a symbol of trade. By ‘symbol of trade’ is meant any design such as mentioned above or trademark characteristic of certain goods or the product of a certain manufactory.”

(Testimony of Oscar W. Bond.)

By Mr. TOWNSEND.—If the witness desires to make his answer complete, I suggest that he also quote paragraph 3, column 1, page 1, beginning line 14, after the object of the invention.

Q. 43. I notice, in the last paragraph of the specification of this second Cohn patent, on page 1, the statement that when the window-opening is formed by the application of a grease or equivalent compound to the envelope blank, “the colored or stained window is essential to the production of a window of properly defined outline.” What is your understanding as to whether it is the colored or stained “window” or the colored or stained “border” that is referred to in the matter quoted by me?

A. It is the colored or stained window that is the thing which is essential.

Q. 44. I am not asking you as to what is “essential” in the statement quoted in my last question. The specification uses the word “window” twice in such quotation, and my inquiry is, in effect, as to whether the word “window” should have been used twice or only once, and the word “border” used where the word “window” is first used.

Objected to as irrelevant and immaterial.

A. Undoubtedly the word “border” should have been [494] used in place of “window,” where the word “window” first occurs, as the border is colored or made opaque, while the window proper is left transparent.

Q. 45. What is it, in the envelope of this second Cohn patent, that is described as colored or stained—

(Testimony of Oscar W. Bond.)

the window or the border? A. The border.

Q. 46. Look at the claims of this second Cohn patent and tell us what it is that you understand is to be in outline “characteristic of some symbol of trade”? A. The transparent window.

Q. 47. What is it, as you understand the claims, that is to surround this characteristic shaped window of the claims of the second Cohn patent?

Such inquiry is objected to as incompetent, if it has for its design and object the disproving of infringement by defendant of Claim 1 in view of the admission made in open court, on behalf of the defendant, that the combination of Claim 1 of this second Cohn patent is infringed by the defendant.

A. A tinted or colored border in Claim 1; and a generally opaque face in Claim 2.

Q. 48. And what is required, as you understand it, to appear or be on the tinted border of the first claim, and on the face of the envelope of the second claim?

The same objection, as far as the question relates to the first claim; and also the question is objected to as the claims are [495] the best evidence of their contents and scope; and the question calls for the mere legal conclusion of the witness, and it is not seen how the opinion of the witness is going to be of assistance to the Court, especially in view of the defendant's admission of infringement of Claim 1, and the obvious and simple character of the invention involved and claimed.

A. On the tinted border of the first claim, per-

(Testimony of Oscar W. Bond.)

manent advertising matter is to appear; such matter forming no part of the address.

On the face of the envelope, permanent printed matter is to appear, under the second claim; such printed matter to co-operate with the outline of the transparent window, to indicate a particular brand of goods.

Q. 49. What is it, according to your understanding of both of the claims of the Cohn patent, that is to be "in outline characteristic of a symbol of trade"—the window or the border?

Same objection.

A. The transparent window.

Q. 50. Please look at the Complainant's Exhibit "C," being one of the envelopes used by the defendant, and which, for convenience, I will hereafter refer to as the Heinz envelope, and compare the same with the envelope described and claimed in both of the claims of this second Cohn patent, and state your opinion, whatever it may be, as to whether or not, you find, in the Heinz envelope, the envelope described [496] and claimed in each of the claims of this second Cohn patent, giving your reasons for any opinion that you may express.

The question is objected to as leading; it is also objected to specifically as an apparent attempt to impeach defendant's voluntary admission, made in open court, that the combination of Claim 1 of this second Cohn patent is infringed by the defendant, and which admission appears on page 32 of complainant's record, and which admission is as follows.

(Testimony of Oscar W. Bond.)

“Mr. SULLIVAN.—We admit that exhibit ‘C’ does contain those features; that is, that it has ‘a window through which the addressee’s name on the enclosure may show, said window being an outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window, and permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said window.’ Is that what you want?

“Mr. TOWNSEND.—You concede that the entire combination of Claim 1 is shown in exhibit ‘C’?

“Mr. SULLIVAN.—We concede that the exhibit does show that.”

By Mr. BANNING.—Defendant’s counsel at this point desires to state that the defendant is not and ought not to be prevented from showing the facts, whatever they may be, as to the identity or nonidentity of the defendant’s envelopes with the envelope described and claimed in the first claim of this second Cohn patent, [497] in view of the fact, as the same will appear from this statement, that the admission referred to by complainant’s counsel, and quoted in his objection above, was made inadvertently by his associate, who was employed merely to act as resident solicitor for the defendant, and who, in making the admission referred to, acted contrary to the explicit instructions which had been given him when he was authorized to attend the taking of com-

(Testimony of Oscar W. Bond.)

plainant's *prima facie* testimony, which defendant's counsel, on whom the responsibility of conducting the defense depended, did not feel required his personal attendance in San Francisco, at an expense of several hundred dollars to his client; that, as he expected the proceedings in the taking of the *prima facie* testimony to be brief and practically formal, he directed the resident solicitor, Mr. Sullivan, to attend, and gave him instructions, as to what he should do, in a letter dated October 11, 1910, which he here reproduces in this statement, as follows:

**[Letter, Dated October 11, 1910, Banning & Banning
to William A. Sullivan.]**

“October 11, 1910.

Mr. William A. Sullivan,

Attorney at Law,

1110 Humboldt Bank Building,

San Francisco, California. [498]

Dear Mr. Sullivan:

We find on inquiry from our client that the only kind of envelopes that the Heinz Company has used of its manufacture are similar to the ones which we inclose you, in which the transparent window in the envelope is of the same form as it has used in other envelopes, but provided with a green surrounding border resembling in general outline the form of a cucumber and with the word ‘Heinz’ printed on the back of the envelope, so that before a letter is inserted or after a letter has been removed it will appear through the transparent window. We inclose you several of these envelopes, and if Mr. Townsend de-

(Testimony of Oscar W. Bond.)

sires to make his *prima facie* case you may admit that envelopes like them were used by the Heinz Company—not manufactured but simply used—subsequent to the date of the Cohn patents and prior to the filing of the bill. It may be that Mr. Townsend will be in no hurry to take his *prima facie*, but if he should serve notice on you you may accept the same and inform him that you are prepared to admit the kind of envelopes that the defendant has used, provided they correspond with the ones which we inclose. We presume that all Mr. Townsend will do in making his *prima facie* will be to offer the patents in evidence, samples of the envelopes, and examine an expert to testify to the similarities between the envelopes and the patents.

Do not admit infringement, as we think there is no infringement—particularly of the second Cohn patent. Simply admit the fact of use, but make no admission that such use infringes the Cohn patents.

Mr. Townsend should furnish you a carbon copy of his testimony without charge, in consideration of our doing the same with our testimony. This is all provided for in the stipulation that we sent you yesterday and which we trust you will be able to get Mr. Townsend to sign.

Yours very respectfully,

(Signed) BANNING & BANNING."

TAB: F.

Counsel states that he requested Mr. Sullivan to have a copy of the testimony, taken by the complainant on *prima facie*, made by the Master, Mr. Wright,

(Testimony of Oscar W. Bond.)

before whom the testimony was taken, and sent to him, so that he could be apprised of its nature and purport; that he received the copy of the testimony on November 16th last, and immediately read the same; that then, for the first time, [499] did he have any knowledge or intimation that the instructions which he had given, in the letter quoted above, had been inadvertently, as he has no doubt, overlooked by Mr. Sullivan, and the admission quoted by complainant's counsel made in the taking of the deposition of the witness Maynard; thereupon, on the same day, he wrote Mr. Sullivan that he had made a mistake, as counsel did not consider that the defendant's envelopes contained any window characteristic of a symbol of trade, as called for in the claims of the second Cohn patent, and, in order that complainant's counsel might be apprised of the views and position of defendant's counsel, he requested Mr. Sullivan to notify complainant's counsel that he withdrew the admission, and that, if complainant's counsel desired, he might recall the witness Maynard, notwithstanding his time for taking his *prima facie* testimony had expired; that counsel desired such notice to be given, so that complainant would not be prejudiced, and so that complainant's counsel would not be misled as to the actual position of the defendant's counsel, on whom the responsibility of the defense rested; that thereupon Mr. Sullivan served a notice on [500] complainant's counsel, withdrawing the admission, which notice, of which complainant's counsel accepted service, is as follows:

(Testimony of Oscar W. Bond.)

**[Notice of Withdrawal of Certain Admissions Made
by W. A. Sullivan at Taking of Testimony of
Complainant November 3, 1910.]**

*“In the Circuit Court of the United States, Ninth
Judicial Circuit, Northern District of California.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

To the Complainant Herein, and to Charles E. Townsend, Esq., His Attorney:

You and each of you will please take notice that the defendant herein hereby withdraws the following admissions made by William A. Sullivan, at the taking of the testimony of the complainant herein on November 3, 1910, viz.:

‘Mr. SULLIVAN.—We admit that Exhibit “C” does contain those features; that is, that it has “a window through which the addressee’s name on the enclosure may show through; said window being in outline characteristic of some symbol of trade, and a tinted or colored border, characteristic of some symbol of trade, and a tinted or colored border, surrounding and giving definition to said window, and permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said win-

(Testimony of Oscar W. Bond.)

dow.” Is that what you want?

Mr. TOWNSEND.—You concede that the entire combination of Claim 1 is set forth in Exhibit “C.”

Mr. SULLIVAN.—We concede that the exhibit does show that.’

Said admissions being contained and set forth on page 32 of complainant’s testimony, taken on said November 3, 1910.

Said withdrawal of said admissions is made upon each and every one of the following grounds:

1. That said William A. Sullivan at the time of making said admissions had no authority, express or implied, from the defendant to make said admissions, or any of them.

2. That said William A. Sullivan in making said [501] admissions and each of them, exceeded his authority from defendant, and acted contrary to the express instructions and directions of defendant.

3. That said admissions were and are, and each of them is, untrue.

4. That said admissions were, and each of them was, made by said William A. Sullivan, through the excusable neglect of said Sullivan.

5. That said admissions were, and each of them was, made by said William A. Sullivan, through the excusable mistake of said Sullivan.

You and each of you will further please take notice that defendant herein hereby offers to permit you to proceed further with the examination of the witness Maynard, concerning each and every matter and

(Testimony of Oscar W. Bond.)

thing set forth in said admissions, and each of them, and does hereby waive any and all objections to the further examination of the said witness as to any of said matters and things, upon the ground that the time for the taking of the testimony on behalf of the complainant herein has expired. Said defendant further offers to pay any and all costs necessary and incident to the further examination of the said witness, Maynard, as to any of said matters and things set forth in said admissions, or any of them.

Dated: November 23, 1910.

(Signed) BANNING & BANNING,
Solicitors for Defendant.

(Signed) WM. A. SULLIVAN,
Resident Solicitor for Defendant."

"Due service of a copy of the within hereby admitted November 23, 1910, but comes too late and is not well founded.

(Signed) CHAS. E. TOWNSEND,
Solicitor for Complainant."

Defendant's counsel, in view of the facts and circumstances, now for the first time exhibited to the Court, submits that no attention whatever should be paid to an admission made without authority, against instructions, and by one who had had no occasion to study the second Cohn patent [502] or to form an opinion as to its real scope and meaning, and on whom the burden and responsibility of the defense was not imposed and did not rest, and so he considers and submits that he is fully entitled to show the facts on the question of infringement of the second Cohn

(Testimony of Oscar W. Bond.)

patent, whatever they may be, for the consideration and determination of the Court when the case is reached for hearing.

Counsel therefore insists upon the question now on the record for answer, and asks that it be again read to the witness and his answer taken.

By Mr. TOWNSEND.—In addition to the insufficiency of the foregoing explanation, by counsel for defendant, counsel for complainant begs to add that, at the time said notice last above quoted was served, counsel for complainant had already received notice of the taking of depositions on behalf of defendant in Chicago, beginning December 1st, 1910; that counsel for complainant had arranged his transportation in view of attending the taking of said depositions by defendant in Chicago, and that as Thanksgiving was on November 24th, it was a practicable impossibility for the complainant to have taken any more testimony, in [503] accordance with the offer and invitation of defendant, and have made the trip to Chicago in time for attending this present session.

By Mr. BANNING.—Defendant's counsel calls attention to the fact that the notice quoted above contains no restriction or limitation as to when the complainant could take the additional testimony referred to, if he desired to take the same, and that, in order that there may be no misapprehension, and in order that the complainant may be in no way prejudiced, he now states that, if the complainant so desire, he may take such additional testimony, on the question of infringement of the first claim, or of both

(Testimony of Oscar W. Bond.)

claims, of the second Cohn patent as he may desire, when he comes to take testimony in reply or rebuttal to the testimony of the defense; and that no objection will be made to such additional testimony, on the ground that it should have been taken on the *prima facie* instead of in reply or on rebuttal.

Recess.

A. Complainant's Exhibit "C" Defendant's Envelope, which will be hereafter referred to by me as the Heinz envelope, is not the envelope described and claimed in the first and second claims of the second Cohn patent. [504]

The first claim of the second Cohn patent is for an advertising device, in the form of an envelope having a window through which the addressee's name on an inclosure may show through, and it is specifically stated that this window shall be in outline characteristic of some symbol of trade, such as noted in the specification of said second Cohn patent, like an oyster, or a fish, or some other product or article of manufacture, or design of a particular nature. The window of the envelope, covered by the first claim of the Cohn patent, is one which presents an outline resembling the outline of a product or an article of manufacture, or a trademark, or some other design.

An examination of the Heinz envelope discloses that it has a transparent window, of an oblong shape, with straight top and bottom edges, and curved ends, which in no manner resembles the outline of a product, or an article of manufacture, or a design of a specific character, or a trademark, but is simply

(Testimony of Oscar W. Bond.)

an ordinary transparent window without an outline characteristic of some symbol of trade.

The Heinz envelope, therefore, lacks entirely the peculiar transparent window called for by the first claim of the second patent in suit, and fails entirely to embody this feature of having a transparent window in outline characteristic of some symbol of trade; and, lacking such window, the Heinz envelope is not within the subject matter of the first claim of the Cohn patent.

Another feature of the first claim of the Cohn patent is a tinted or colored border surrounding and giving definition to the transparent window, by which is meant bringing out distinctly the contour or outline of the transparent window, as to being characteristic of some symbol of trade. [505]

The Heinz envelope has a tinted or colored border, which surrounds the window, but this tinted or colored border is for the purpose of covering up or obscuring ragged or defective edges, produced by treating the paper in making the transparent window, and forming the subject of the first Cohn patent, differing, however, from the border of the first Cohn patent, in having the peripheral edge of the tinted or colored border made to represent the exterior appearance of a cucumber. This border, formed around the transparent window of the Heinz envelope, performs the office and function of the border of the first Cohn patent, and, in addition, presents to the eye the outline of a cucumber, which outline, however, is not carried into the transparent

(Testimony of Oscar W. Bond.)

window of the Heinz envelope, as required by the second Cohn patent.

Another feature entering into the device of the first claim of the Cohn second patent is permanent advertising matter, which is to appear on the tinted border and is related to and in juxtaposition with the outline of the transparent window. Such advertising matter forming no part of the window.

An examination of the Heinz envelope discloses that it has, on the border face of the envelope, the ordinary return card of the user of the envelope, such as has been printed on ordinary envelopes for many years. The Heinz envelope does not have, on its tinted face, any advertising matter, and no matter, outside of the ordinary return card, that is in relation to and in juxtaposition with the window, as all of the [506] face of the envelope, outside of the tinted border around the window, is a plain, ordinary, every day kind of an envelope.

This Heinz envelope, therefore, in my opinion, lacks another important feature of the envelope of the first claim of the second Cohn patent, as it does not have, on its tinted or colored face, any advertising matter of any description whatsoever. It therefore lacks entirely this requirement for an envelope containing the subject matter of the first claim of the Cohn second patent, as regards having a face with advertising matter thereon, and related to, and in juxtaposition with, the window.

It seems to me clear that the Heinz envelope lacks entirely two characteristics or features pertinent to

(Testimony of Oscar W. Bond.)

the envelope of the first claim of the second Cohn patent, which features or characteristics are, a transparent window presenting the outline which is characteristic of some symbol of trade, and advertising matter on the colored or tinted border surrounding this window, which advertising matter is related to and is in juxtaposition with the outline of said window.

I am therefore clearly of the opinion that, lacking as it does the two above-named features or characteristics of the envelope of the first claim of the Cohn second patent, the Heinz envelop does not comply with the requirements of said first claim, and is not the envelope called for by said first claim.

The second claim of this Cohn second patent is for an advertising device, in which an envelope, having a generally opaque face, is utilized, said opaque face surrounding a transparent window portion, through which an addressee's name on the inclosure may show or be seen. By opaque face is meant [507] a face having coloring-matter applied solid over its entire surface, so as to inclose the transparent window. The transparent window is one having a general outline characteristic of a symbol of trade, by which is meant that the transparent window has its outline of a shape to present the outline of a product, or trade, or an article of commerce, or any desired design.

As already stated, in considering Claim 1 with this same characteristic window, the Heinz envelope does not have a window in general outline of some symbol

(Testimony of Oscar W. Bond.)

of trade. It has an oblong window with straight top and bottom edges and curved ends, being the ordinary window used in transparent envelopes.

This Heinz envelope lacks entirely a window having the feature or characteristic of being in general outline characteristic of a symbol of trade, and therefore lacks this feature or characteristic, which is called for by the second claim of the second Cohn patent.

The Heinz envelope has the ordinary transparent window, surrounded by a border of opaque material, by means of which any rough or imperfect edges around the transparent window will be covered up or obliterated, as called for by the first Cohn patent; but this surrounding opaque border does not extend entirely over or generally over the face of the envelope outside of the transparent window, and in this respect does not meet the full requirements of the second claim of the second Cohn patent, of having a generally opaque face.

Another feature of the device of the second claim of this Cohn second patent is having permanent printed matter [508] on the face of the envelope, which printed matter is related to and is in juxtaposition with the outline of a window and co-operates with said outline to indicate a particular brand of goods. This particular feature or characteristic of the envelope of the second claim of this Cohn second patent requires that on the envelope shall appear printed matter which, in conjunction with the outline of the window, shall denote or indicate a particular

(Testimony of Oscar W. Bond.)

kind of goods, as, for instance, the name of some cigar, placed in juxtaposition with a transparent window, presenting the outline of a cigar.

The Heinz envelope does not have on its face any permanent printed matter, except the ordinary return card of the user of the envelope, which return card has been used on the corners of envelopes for many years. Outside of this return card, there is no printed matter of any character or type on the face of the envelope, and there is nothing in the shape of printed matter which would indicate, in connection with the outline of the transparent window, any particular kind or brand of goods. The face of the Heinz envelope is a plain face of an ordinary envelope, without any indicating printed matter.

The Heinz envelope lacks, then, this feature or characteristic, which is a requirement of the second claim of the Cohn second patent, of having on its face printed matter, so related and in such juxtaposition to the outline of the window, as to indicate a particular brand of goods.

I am therefore clearly of the opinion that this Heinz envelope is not the envelope called for by the second claim of the Cohn second patent, for the reason that the said [509] Heinz envelope lacks two special features or characteristics of the envelope of the second claim of the Cohn second patent, which features or characteristics are, a transparent window which in general outline is characteristic of a symbol of trade, and permanent printed matter on the face of the envelope, so related and in such juxtaposition

(Testimony of Oscar W. Bond.)

to the transparent window as to indicate in connection with the outline of the window, a particular brand of goods.

I am therefore clearly of the opinion, for the reasons stated, that this Heinz envelope is not the envelope of the second claim of the Cohn second patent.

The border, surrounding the transparent window, in the Heinz envelope, has an edge or outline, around its periphery or outer edge, resembling a cucumber, and on the inside of the back of the envelope is printed the word "Heinz." The purpose of this representation of a cucumber, and the use of the word Heinz showing through the transparent window, as I understand the same, is to carry into the envelope the trade-mark of the Heinz pickle company, as used in connection with the receptacles containing articles put up by said Heinz pickle company.

The small border encircling the plain window of the Heinz envelope is for the purpose of covering up or obscuring ragged or imperfect edges which might be formed in producing the transparent window, being the same purpose as the border used in the Cohn first patent, and not in any way tending to conform to or make more pronounced an outline which is characteristic of some symbol of trade, as called for by the border or opaque face of the claims of the second Cohn [510] patent.

Q. 51. If the green border on the Heinz envelope were carried out or spread over the entire surface, or "applied solid over the face of the envelope," as

(Testimony of Oscar W. Bond.)

the specification of this second Cohn patent says the border may be, would the transparent window, remaining unchanged, be in any way characteristic of a symbol of trade, or of a cucumber, or of any article, to indicate a manufacture or dealer?

The question is objected to as irrelevant and immaterial, as involving a construction of the patent neither warranted by the patent itself or by the evidence, and as involving a theoretical something not employed or contemplated by the defendant.

A. It would not.

Q. 52. How is the window, shown in Figure 1 of the drawings of this second Cohn patent, considered by itself—in the shape of some article or thing sold and dealt in?

A. It presents the outline of a cucumber.

Q. 53. What is employed in the Heinz envelope to present the outline of a cucumber?

A. The surrounding border, the outer edge of which is made to present the outline of a cucumber.

Q. 54. Please compare the size and shape of the window in the Heinz envelope with the size and shape of the window in the Transo Company's stock envelope in evidence, and tell us how you find them to correspond, or not to correspond, with each other, as the case may be.

A. The windows of the two envelopes are the same, as to their size and shape. [511]

Q. 55. Do you know any trademark or article of commerce that the window in the Transo Company's stock envelopes can be said to be in outline character-

(Testimony of Oscar W. Bond.)

istic of, so as to indicate the merchant or dealer handling the same? A. I do not.

Q. 56. I call your attention to the Watts British Patent No. 7955 of 1895, to which I called your attention the other day, and to the Boldt British Patent No. 29,956 of 1897, to which I have not before called your attention, and ask you to state what you may find disclosed in said patents, as to the use of transparent windows of various forms and shapes, and as to the use of transparent windows that may be utilized "for advertisement purposes, trademark, or the like," or which may be made to represent "letters, trademarks, or devices." In considering each of the patents referred to, you may state the bearing which you may consider that it has on the question of the novelty or patentability of the envelope described and claimed in this second Cohn patent, in view of the fact that one-piece transparent window envelopes were old in the art, as disclosed in the Brown 1862 patent, and in view of the fact that one-piece transparent window envelopes, with borders around the windows, form the subject of the first Cohn patent, and are not claimed in the second Cohn patent, except when the window is made in outline characteristic of some symbol of trade.

Objected to as leading; also as irrelevant and immaterial.

THE WATTS 1895 BRITISH PATENT.

This Watts 1895 British patent relates to the packing or making up of tobacco or other goods in packets,

(Testimony of Oscar W. Bond.)

cases, [512] cannisters, or the like.

The object of the invention is to enable the goods inside of the package, case, or wrapper to be readily observed from the outside, so as to avoid the necessity of opening the package, case, or wrapper.

The invention is carried out by cutting a hole or opening of any desired shape in the body of the wrapper, and placing behind this hole or opening a sheet of any suitable transparent material, such as gelatine or celluloid, thereby forming a window through which the contents of the wrapper or package can be observed.

The drawings show various forms of making this window of transparent material. Fig. 1 shows the window in the shape of a triangle; Fig. 2 shows the window of a circle formation; Fig. 5 shows the window of an oval shape with sharp corners or ends; Fig. 6 shows the window with straight line bottom and sides and a curved top; and Fig. 8 shows the window in the form of a diamond.

The triangle or pyramid, and the diamond-shaped windows might be used as trademarks, for some manufacturers.

Considering the second Cohn patent with what is disclosed in the Watts patent in connection with the fact that one-piece transparent window envelopes were old in the art, as found in the Brown 1862 patent, and the further fact that one-piece transparent window envelopes, with borders around the windows, form the subject of the first Cohn patent, and are not claimed in the second Cohn patent, except when the

(Testimony of Oscar W. Bond.)

window is in outline characteristic of some symbol of trade, it seems to me that the second Cohn patent has [513] not added anything to the art of making envelopes or wrappers, having transparent windows of an outline characteristic of some symbol of trade or trademark, for the reason that, in the Watts patent, there is disclosed wrappers employing windows in outline that could be used as a trademark, particularly the pyramid or triangle-shaped window and the diamond-shaped window.

The making of these specially shaped windows integral with the body of the envelope or wrapper would be within the disclosure of the Brown 1862 patent, and the surrounding of these specially shaped transparent windows with a border would be within the Cohn first patent.

The most that can be said as to this second Cohn patent is that Cohn adopted the idea of a special shaped window to be used as a trademark or symbolic of some article in the manner disclosed by the Watts 1895 British patent, using the Brown 1862 patent and the Cohn first patent to complete the envelope. This could be done, in my opinion, without any employment of the inventive faculties.

THE BOLDT 1897 BRITISH PATENT.

This Boldt 1897 British Patent relates to the packing of hooks and eyes and other articles.

One subject or purpose of the invention of this Boldt British patent is to provide the packet, wrapper, or envelope in which articles are inclosed, with

(Testimony of Oscar W. Bond.)

one or more openings, which openings are closed or covered with a transparent material, such as celluloid, thus enabling the contents of the packet, wrapper, or envelope to be ascertained readily.

The drawings illustrate various forms of wrappers embodying the invention, and having openings in the body of [514] the wrappers, and the openings closed by a piece of transparent material. The transparent opening in Fig. 1 is in the form of a circle; the transparent opening in Fig. 2 is an oblong one, with straight top and bottom sides and curved ends, resembling the window used in the Stock envelope exhibited in this suit. The opening in the wrapper of Fig. 3 is in the form of a shield. The opening in Figs. 4, 5, 6, 7, and 9, are rectangular or square in shape. It will thus be seen that many forms and designs of openings, forming transparent windows, are shown in this Boldt patent. Fig. 8 of the drawings of this Boldt patent shows an opening cut in the shape of a letter N, and it is stated that "the letter might be chosen to indicate the name of the maker or the full name might be set forth." It is further stated, in the specification of this Boldt patent,

"The same purpose may be effected by painting, embossing or otherwise delineating a trademark or a name or other symbol or device upon the transparent covering as indicated in Fig. 9. Any design or symbol for the purpose of identification or advertisement or other purpose may

(Testimony of Oscar W. Bond.)

be conveniently set forth on the transparent covering C."

It is clear that the inventor Boldt intended and had in mind to utilize the transparent window or opening as a means for delineating a trademark or name or other symbol, or any design or symbol, for the purpose of advertising, being the purpose sought in the second Cohn patent. That this is so is clear from the claims, and from the following statement in the specification, where it says:

"More than one of these openings protected by transparent materials may be used and they may be of any desired shape or size or pattern. For example, they may be made to represent the initials of the firm selling them or may otherwise be utilized for advertisement purposes, trademarks, or the like." [515]

Claim 3 of this Boldt 1895 British patent is as follows:

"3. A window envelope or wrapper having one or more openings such as B covered by transparent material representing one or more letters, trademarks or devices."

Considering the second Cohn patent in connection with what is found in the Boldt 1895 British patent, and the fact that a one-piece transparent window envelope is old in the Brown patent, and the further fact that a one-piece transparent window envelope, with a border of opaque matter surrounding the window, is specifically claimed in the first Cohn patent, and is not claimed in the second Cohn patent, except

(Testimony of Oscar W. Bond.)

in connection with a window of an outline characteristic of some article or mark or design, it seems clear to me that the second Cohn patent is lacking in patentable novelty over the disclosures of the Boldt patent, the Brown patent, and the first Cohn patent.

It would not, in my opinion, require invention to take the window of transparent material of the Boldt 1895 British patent and make such window in the form of a trademark or other design, as stated in the said Boldt patent, and in so doing employ the making of a window integral with the body of the wrapper or envelope, as disclosed in the Brown 1862 patent, and surround such transparent window with an opaque border, as in the Cohn first patent. It would only require the skill of an ordinary mechanic, familiar with the work, to make the changes required to produce, from the Boldt British patent, what is disclosed in the Cohn second patent.

Q. 57. With the envelope of the first Cohn patent in hand, what would the teachings of the Boldt patent disclose to any one skilled in the art of making transparent one-piece [516] window bordered envelopes, as to making the windows of one-piece envelopes in outline characteristic of some symbol of trade?

The question is objected to as incompetent, irrelevant and immaterial.

A. It would disclose all that is necessary, in order to make such an envelope.

Adjourned until Wednesday, December 14, 1910,
10 o'clock A. M.

(Testimony of Oscar W. Bond.)

Chicago, Illinois, December 14, 1910.

Parties met pursuant to adjournment. Present as before.

Q. 58. Taking the envelope of the first Cohn patent with its transparent window and border, and taking the Boldt patent with its statement that the transparent window in the "packet, wrapper, envelope or whatever it may be termed," made as Boldt says "to represent the initials of the firm selling them or may otherwise be utilized for advertisement purposes, trademarks or the like," or as he expresses it in Claim 3, with the "transparent material representing one or more letters, trademarks or devices," what, in your opinion, would be required to change the form of the window in the Cohn envelope to make "said window in outline characteristic of some symbol of trade," in view of the fact that in the specification of this second patent Cohn says that "by 'Symbol of trade' is meant any design such as mentioned above or trademark characteristic of certain goods, or the product of a certain manufactory"?

Objected to as leading; also as incompetent and immaterial. [517]

A. The work required would be that of an ordinary mechanic or person skilled in the making of envelopes.

Q. 59. In your opinion, would any invention be required? A. None whatever.

Q. 60. When envelopes have been made with windows of one form or shape, would it, in your opinion,

(Testimony of Oscar W. Bond.)

involve any invention to make envelopes with windows of any other 'desired shape, particularly in view of the fact of the disclosure, in prior patents, of envelopes, wrappers, or other closures, with windows of various and diverse shapes?

Objected to as irrelevant and immaterial.

A. No, it would not.

Q. 61. I believe you called attention, in discussing this 1897 English Boldt patent, to one of the ways described in such patent, of representing the trademark or device by painting or otherwise delineating it upon the transparent window or covering, or the opening in the envelope. When this method, described in the Boldt patent, is followed instead of having the transparent material itself present or represent the trademark or other device used, as stated, for example, in the Boldt third claim, how far, in your opinion, if the word "Heinz" showing through the transparent window of the Heinz envelope be regarded as a part of or connected with the transparent window of such Heinz envelope, would the Heinz envelope follow or correspond to that particular method of showing or representing the trademark or device described in the Boldt patent?
[518]

Objected to as irrelevant and immaterial; as leading; and presuming a reconstruction of the Boldt reference, not warranted either by the evidence or the patent itself.

A. Under the conditions stated in the question, the Heinz envelope, in my opinion, follows or corre-

(Testimony of Oscar W. Bond.)

sponds to the particular method of showing or representing the trademark or device in the form described in the Boldt patent and referred to in the question as being painted or otherwise delineated on the transparent material.

Q. 62. How many methods, if more than one, do you find described in the Boldt patent, for representing or employing a trademark or device in connection with the transparent window of the envelope?

A. Two. One, by having the letter or trademark formed by the outline presented by the transparent material; and the other produced by painting, embossing, or otherwise delineating the trademark or device so as to appear on the transparent material.

Q. 63. Which, in your opinion, do the Heinz envelopes most nearly resemble—the second Cohn patent, or the Boldt patent, in the method of showing a trade name or mark, as pointed out in your last answer as the second method of the Boldt patent?

A. The Boldt patent.

Q. 64. Both of the claims of this second Cohn patent speak of permanent advertising matter, printed or otherwise placed on the face of the envelope, and the drawing shows words forming such permanent advertising matter, [519] so located on the envelope as to not interfere with the portion of the envelope for displaying or showing the name of the addressee to whom a letter or other matter contained in the envelope is being sent. How long, to your personal knowledge, as a matter of fact, have you seen, in general or common use, envelopes con-

(Testimony of Oscar W. Bond.)

taining, on their faces, so located as not to interfere with the part reserved for the addressee's name, permanent advertising matter employed on the envelopes?

Objected to as irrelevant and immaterial; and on the further ground, that if anticipation is attempted to be shown by prior knowledge or use by the witness, that the name of this witness has not been noticed, as required by the statute.

A. Practically ever since I have noticed envelopes of the character specified in the question, which would extend over a period of more than forty years.

Q. 65. I show you, simply as illustrations, two envelopes, one containing, in the upper left-hand corner, the words "Return in 5 days to Wm. Goyette, Plumbing and Heating, 1453 E. 55th Street, Chicago, Ill.," and the other containing on the left-hand portion of its face, the picture of the "Flying Dutchman," and the words "After 5 days return to Molin Plow Co., Moline, Ill. Agricultural Implements, Wagons, Spreaders, Vehicles, Grain Drills," and ask you how long, to your knowledge, you have known of the general use of envelopes with advertising matter of various kinds printed on the face of the envelopes, of which these shown you may be [520] regarded as type samples or illustrative?

Objected to as irrelevant and immaterial.

A. As early as the year 1866, at least.

Defendant's counsel offers in evidence the two envelopes shown the witness, not as in themselves old envelopes but simply as illustrations of kinds of per-

(Testimony of Oscar W. Bond.)

manent advertising matter which business men and manufacturing companies have used generally for many years, and ask that the same be marked "Defendant's Exhibit Goyette Envelope" and "Defendant's Exhibit Moline Envelope."

The receipt in evidence of the two envelopes last referred to is objected to, as the same are irrelevant and immaterial as to any of the issues of the present case.

Q. 66. I show you another envelope, simply as an illustration of the sort of envelope used by lawyers, with the following words printed in the upper left-hand corner, namely: "H. A. Toulmin, Counselor-at-Law, Patent and Trade-Mark Causes. Bushnell Building, Springfield, Ohio. Return if not delivered in 5 days," and ask you how long you have known of the use, among lawyers, of envelopes containing printed matter showing their specialty or particular line of work, and matters of that sort, printed permanently on the face of the envelope.

A. For forty years, at least. [521]

By Mr. BANNING.—Defendant's counsel here offers in evidence the various letters patent or publications called to the attention of the witness, and about which he has been interrogated and testifying, and others, namely:

UNITED STATES PATENTS.

No. 36,393, of Sept. 9, 1862, to J. S. Brown.

Re-issue No. 8,514, of Dec. 3, 1878, to R. M. Tudor.

No. 369,059, of Aug. 30, 1887, to J. Jacobson.

(Testimony of Oscar W. Bond.)

No. 752,537, of Feb. 16, 1904, to A. G. Eneas.

No. 766,902, of Aug. 9, 1904, to George Reese.

BRITISH LETTERS PATENT.

No. 1119 of 1861, to Johnson.

No. 5823 of 1884, to Peace.

No. 746 of 1894, to Hole.

No. 2339 of 1894, to Pescheux et al.

No. 21,711 of 1894, to Leigh.

No. 7955 of 1895, to Watts.

No. 29,956 of 1897, to Boldt.

No. 25,532 of 1901, to Smith et al.

No. 14,478 of 1904, to Cohn et al.

Defendant's counsel states that he considers that the above patents are fully and unmistakably identified by their dates, numbers, and names, so that it is unnecessary to put any other identifying name or mark on them, but that copies or duplicates of each of said patents will be attached to the defendant's testimony and returned to [522] the Court therewith.

By Mr. TOWNSEND.—The receipt in evidence of each and all of said patents above is objected to, as they are irrelevant and immaterial to any of the questions here involved; the receipt in evidence of the patents to Tudor, Jacobson, and Eneas *is* Eneas, and Reese, and each of them, is specifically objected to, on the ground that the same have not been noticed to the complainant, as required by section 4920, U. S. Statutes.

By Mr. BANNING.—Defendant's counsel suggests to the Court that the patents above referred

(Testimony of Oscar W. Bond.)

to as not having been noticed or set up in the answer are nevertheless competent, as showing the state of the art, to divest the complainant's patents of novelty or patentability or invention, should the Court consider their subject matter as having such effect, under numerous decisions of the Supreme and Circuit Courts, of which counsel here cites, as illustrative of such decisions, the decision of the United States Circuit Court of Appeals for the Second Circuit, in the case of *Jones v. Cyphers*, 126 Fed. Rep., page 753. [523]

By Mr. TOWNSEND.—Anent counsel's statement, counsel for complainant would further add that the patents to Tudor, Jacobson, Eneas, and Reese are objected to as being inadmissible to show the state of the prior art, to which the Cohn inventions belong.

By Mr. BANNING.—Defendant's counsel also offers in evidence the following:

A certified copy of the file-wrapper and contents in the matter of letters patent of Max M. Cohn, No. 835,850, granted November 13, 1906, for improvements in Envelopes.

A certified copy of the file-wrapper and contents of the appeal to the Examiners-in-Chief, No. 27,349-A, filed February 28, 1906, in the matter of the application of Max M. Cohn, filed November 8, 1904, Serial No. 231,886, for Improvements in Envelopes.

A certified copy of the file-wrapper and contents in the matter of the letters patent to Max M. Cohn,

(Testimony of Oscar W. Bond.)

No. 824,908, granted July 3, 1906, for Improvement in Envelopes.

A certified copy of the file-wrapper and contents of the appeal to the Examiners-in-chief, No. 27,350-B, filed February 28, 1906, in the matter of the application of [524] Max M. Cohn, filed January 17, 1905, Serial No. 241,459, for Improvements in Envelopes.

Counsel states that he considers that the above certified copies are fully identified by the numbers, names, and dates contained on them, without having any further mark or name applied to them by the notary; but that either the same or copies thereof will be attached to the testimony to be returned to the court by the notary.

Defendant's counsel also offers in evidence British Patent No. 11,876 of July 4, 1896, to Busch, as the same is cited by the Examiner and referred to in the appeal of one or both of the above cases, and will therefore serve to illustrate some of the things said by the Examiner and others in the course of the proceedings leading to the grant of the first and second Cohn patents.

Inasmuch, however, as he has as yet been unable to procure a copy of the Busch patent above referred to, owing to the fact, as he is informed, by his correspondents in London, that the same is out of print, but will be reprinted by the British Patent Office and copies forwarded presently, he has been unable, at this time, to produce the [525] same for the inspection of complainant's counsel, but will do so if

(Testimony of Oscar W. Bond.)

possible before the complainant's testimony in reply is taken; and in any event at the earliest date possible upon receipt of such British patent.

Recess.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 67. I suppose, Mr. Bond, from your testimony, as a professional expert, you have been engaged on behalf of defendant to act in that capacity in the present case; I am right in that, am I not?

A. Yes.

XQ. 68. That, in accordance with such employment, you have particularly considered the various patents which you have referred to in the course of your direct examination with the view of endeavoring to seek out an anticipation of the Cohn patents; is that not also true?

A. No. I have studied the Cohn patents, and the prior art as exhibited by the patents in evidence, to which my attention has been called, for the purpose of pointing out the similarities and differences between what is disclosed in the Cohn patents and what is found of the same nature in the prior patents.

XQ. 69. I may have made my statement a little too broad, in the use of the word "anticipation," but I meant that, in this explanation and comparison which you have made between the Cohn patents and the various other patents, you [526] had in view the showing particularly that with all these other prior patents it did not require invention for Cohn to

(Testimony of Oscar W. Bond.)

evolve his patented construction. Is that not correct?

A. Yes. I had in view the showing, by these prior patents, that Cohn had simply utilized old and well known means in their application to an envelope.

XQ. 70. When did you first know of the Cohn patents and Cohn inventions?

A. That I could not say positively. My first direct attention was called to the Cohn patent some month or six weeks ago, to the best of my recollection.

XQ. 71. Would that also be true, as to point of time, with respect to all the other various patents, U. S. and British, about which you have testified?

A. That I would not like to say positively. I have recollections of having seen the Brown patent several years ago; and may have seen some of the British patents also.

XQ. 72. All these patents, however, have been more particularly called to your attention and submitted to your consideration since the bringing of this suit; is that right?

A. Yes, taking the patents as a whole.

XQ. 72. Have you ever had any practical experience in the manufacture of envelopes, such as described in the Cohn patents? A. No.

XQ. 74. I suppose, then, that your knowledge of the invention, and inventions described in the Cohn patents here in suit, has been derived from your study and consideration of those patents; is that correct?

A. Not wholly, as my present recollection is,

(Testimony of Oscar W. Bond.)

[527] that long prior to the time when my attention was called to the Cohn patents, I had been informed as to making of envelopes of a similar character; though I have never seen the operation of envelopes practically carried out.

XQ. 75. By this prior information, do you refer to the Brown patent? A. No.

XQ. 76. Do you refer to any of the other patents about which you have testified? A. No.

XQ. 77. I have followed your outline of the several U. S. and British patents, relied on by the defendant to limit or anticipate the Cohn patents, and have observed with what minuteness and particularity you have dwelt on the *similarities* and *likenesses* between the Cohn patents, and the British patents, and the patents to Brown, Tudor, Jacobson, and Eneas. I would ask you please to assume for a moment that you had been called or retained on behalf of the complainant, and, being imbued with that spirit of impartiality which underlies and is a part of the analytical mind of the expert, please to take these patents to which you have referred, and let us have the *differences* and *dissimilarities* between each of them and the Cohn patents; having in view the aiding of the Court to see both sides of the question; stating what you can in favor of the proposition that these Cohn patents are entitled to the presumption of validity attaching to their issuance. Please include in your answer whatever you can say in favor of the merchantableness of the Cohn inventions as envelopes and as a mailing commodity, as compared with

(Testimony of Oscar W. Bond.)

patent and the envelope of the second Cohn patent, and, like the making of the outline of the transparent section or window characteristic of some symbol of trade or design or trademark, is an addition to what is found disclosed in the first Cohn patent.

The two Cohn patents have in common the making [530] of a section or portion of the face transparent, such transparent section or portion being integral with the body of the envelope on the front or address side. Both of these Cohn patents also have in common making a border of opaque material around the transparent portion or window, to give prominence to the outline of the window, whatever it may be, and to obscure or cover up any ragged edges that may appear around the transparent section or window, with the difference above noted of specific outlines for the transparent sections or windows and the placing of permanent advertising matter or printed matter to go with the outline, as called for in the second Cohn patent.

Considering the first Cohn patent with the patents to which my attention has been called, and about which I have testified, and comparing this first Cohn patent with the disclosures of such prior patents, there are found differences or dissimilarities, as follows:

THE BROWN U. S. 1862 PATENT.

As between what is disclosed in this Brown 1862 patent and the Cohn first patent, the difference between the two envelopes is the difference between an envelope with a transparent window or section, with-

(Testimony of Oscar W. Bond.)

out any opaque border formed separate of the paper of the envelope and surrounding the transparent window or section, and one with such a border, for the purpose of giving prominence to the outline of the transparent section or window and obscuring or covering up any ragged edge which might occur in producing the transparent section or window, of the character shown and described in the Brown 1862 patent. [531]

Briefly stated, the difference between the two envelopes—that of the Brown 1862 patent and that of the Cohn first patent—is the difference between an envelope without any border of opaque material, surrounding the transparent section or window, and an envelope having such border.

XQ. 79. To interrupt a moment, Mr. Bond, will you also point out what is the primary object of Brown, as apparent from the title of the patent and from the description, and state in what way a transparent envelope of the character you have attributed to Brown is incidental to the main object of Brown; and state in what other ways Brown contemplated making or using his envelope to carry out his primary object.

A. The invention of the Brown 1862 patent relates to a new and improved “direction” for or a method of directing letters, papers, and packages, and the invention is captioned as “Addressing Letters.”

The invention is divided into two parts or heads, so to speak. One part, and the part first described, consists in the use of separate transferable cards of

(Testimony of Oscar W. Bond.)

address containing the name of the person or party addressed, and place of residence, and such other particulars as may be needful in giving a correct and sure direction, which cards also, for letters and packages, may include the business or professional card of the business or party addressed, and any other information usual or convenient and desirable, which directions may be written, but generally and preferably are printed.

The second or other part or head of the Brown invention is in the use of an improved envelope or wrapper, of which the improvement consists in making the envelope or wrapper sufficiently transparent to clearly show the cards [532] of address through its face. This transparent portion of the Brown envelope may be only large enough to exhibit the directions through it, and such transparent section can be so made by rendering a portion of the envelope or wrapper transparent of itself, either by means or substances such as employed for making tracing paper or any other in the process of manufacturing the paper or the envelope, leaving the remainder of the envelope opaque. This is one way which is described for making the transparent section for the envelope; and another way is described by cutting a piece of the proper size out of the envelope and covering the opening with transparent paper or other equivalent transparent covering. It also appears that for some uses the aperture, when provided in the envelope, need not have the transparent covering, but, when so made, some of the advantages of the complete

(Testimony of Oscar W. Bond.)

invention are thereby lost, as stated in the patent.

Another way of making the envelope is to have the whole envelope, or at least the whole face of it, made transparent instead of making only a small portion thereof transparent. Where the entire face of the envelope is made transparent, an unsealed opaque wrapper may be placed inside if desired, said wrapper having the address card printed on or attached to it, or separate therefrom, as may be most convenient.

According to the description of the envelope of the Brown 1862 patent, it was the intention of Brown to utilize the transparent portion or window in connection with a separate card or piece of paper, to show the destination of the letter or wrapper, by presenting to view through the transparent [533] section or window the name of the addressee, his place of residence, and any other matter that might be necessary. This Brown envelope is of the same character which is stated to be for envelopes of the Cohn first patent, the specification of which states,

“My invention relates to an improved envelope of the type having a generally opaque surface with a more or less limited transparent area for the addressee’s name and address to show through.”

This would be the envelope of the Brown 1862 patent, and the Cohn first patent is differentiated from this type of envelope in having around the transparent section or window a border of opaque material. This border seems to be the only difference between

(Testimony of Oscar W. Bond.)

the two envelopes—that of the Cohn patent and that of the Brown 1862 patent.

The envelope of this Brown 1862 patent differs from the envelope of the Cohn second patent, in not having the transparent section or window in outline characteristic of some symbol of trade, and in not having an opaque border surrounding this specific type of window.

A further difference is that the Cohn second patent makes provision for permanent printed matter or advertising matter on the opaque border around the transparent section or window, and of a character to co-operate with the outline of the window to indicate a particular brand of goods.

The difference between what Brown intended and what Cohn intended in the use of printed matter or advertising matter is the difference between placing such matter on the card used by Brown independent of the envelope proper, and [534] placing such permanent printing matter on the face of the envelope outside of the transparent section or window. In the one case, that of Brown, the printed matter, whatever its nature, was not a permanent part of the envelope, while in Cohn such printed matter, whatever its nature, formed a permanent part of the envelope.

As to the merchantableness of the envelope of the first Cohn patent and the envelope of the Brown 1862 patent, about the only difference would be the difference between a transparent window without a border, as in Brown, and such window with an opaque

(Testimony of Oscar W. Bond.)

border, as in the Cohn first patent; and this merchantableness would be in favor of the envelope of the Cohn first patent, in that the border would serve to hide ragged edges or imperfections made in producing the window. This same difference, as to merchantableness, is also applicable to the envelope of the Cohn second patent, and in addition to the border, probably having the advertising matter or printed matter a permanent part of the envelope would in some cases make the envelope more merchantable than where such printed matter or advertising matter was on a separate card. This would be the case where the party using the envelope wanted to make prominent the business; but, on the other hand, some other party might desire an envelope not having this permanent printed matter or advertising matter; in which case the envelope of the Brown 1862 patent would be the most merchantable. It would depend entirely on the desire or wish of the user, as to which type of envelope—one with permanent printed matter or one without permanent printed matter—that would be the most merchantable. [535]

Adjourned until Thursday, December 15, 1910, 10 o'clock A. M.

Chicago, Illinois, December 15, 1910.

Parties met pursuant to adjournment. Present as before.

(Witness Continuing:)

THE TUDOR 1878 PATENT.

The primary object of the Tudor patent is treating a blank sheet of paper so as to produce the appear-

(Testimony of Oscar W. Bond.)

ance of a stained glass window, differing in this respect from treating a blank sheet of paper for the purpose of making an envelope having a transparent window.

One difference between the process employed by Tudor and that employed by Cohn is that Tudor employs a plurality of opaque lines or borders to define a plurality of transparent sections or spaces, while Cohn employs an opaque border to define one transparent section or space in the paper.

Another difference is the lack in Tudor of any permanent printed matter or advertising matter around the border of the transparent section or window, which is specifically required in the second Cohn patent.

Another difference is that while Tudor defines various shapes for the transparencies, such shapes are not characteristic of any symbol of trade, as required in the second Cohn patent. [536]

Another difference is that Tudor uses his prepared paper with its different colored transparent sections as an adjunct to a pane of plain glass, while Cohn uses his prepared paper as an envelope.

Another difference or dissimilarity is that the paper is treated by Tudor for the production of ornamental window glasses and not for the production of an envelope, as intended by Cohn in treating the sheets of paper.

Undoubtedly the invention of Tudor would be merchantable for the purpose intended, but not for use as an envelope, and likewise the invention of Cohn

(Testimony of Oscar W. Bond.)

would be merchantable as an envelope, but not as an ornamental window glass.

There are other minor differences, such as the shape or outline of the transparent sections of windows, of Tudor, as compared with the transparent section or window of the Cohn patent; also in the shape of the complete product; also in the laying on of the opaque lines to define the transparent sections of the two articles, namely, the window glass and the envelope.

These differences are apparent between the article produced by using the Tudor invention and the article produced by using the inventions of the two Cohn patents.

These differences result in the production of articles for different purposes and for different conditions of use.

THE JACOBSON 1887 PATENT.

The article or device of this Jacobson patent belongs to the same category as just described for the Tudor [537] patent.

The same differences pointed out in comparing the Tudor invention with the invention of the two Cohn patents likewise pertain to the invention of the Jacobson patent.

THE ENEAS 1904 PATENT.

The primary object of the Eneas patent is the formation of a wrapper or other inclosing device in such manner as to permit the contents, or portions thereof inclosed within the wrapper, to be readily and easily

(Testimony of Oscar W. Bond.)

viewed. The wrapper of the Eneas patent is shown particularly in use with a book.

The difference between the wrapper of the Eneas patent and the wrapper or envelope of the Cohn patents is the difference between an ordinary book wrapper and an ordinary envelope, both provided with a transparent section or window.

Another difference is found between a wrapper or envelope having a transparent section or window formed in the paper itself and the wrapper or envelope having a transparent section or window formed by using a supplemental or additional strip or piece of transparent material, as in the Eneas wrapper or envelope.

Another difference which exists between the Eneas wrapper or envelope and the Cohn wrapper or envelope is found in the nonuse of an opaque border around the transparent section or window in the Eneas wrapper or envelope.

Another difference between the wrapper or envelope of the Eneas patent and the wrapper or envelope of the second Cohn patent is the lack on the Eneas wrapper or [538] envelope of any permanent printed or advertising matter.

Another difference between the Eneas wrapper or envelope and that of the second Cohn patent is the lack in Eneas of any transparent portion presenting an outline characteristic of some symbol of trade.

Another difference between the Eneas wrapper or envelope and the wrapper or envelope of the second Cohn patent is the lack, in the Eneas wrapper or en-

(Testimony of Oscar W. Bond.)

velope, of any printed or advertising matter permanent on the envelope or wrapper, and co-operating with the outline of a transparent window to indicate a particular brand of goods, as required for the envelope or wrapper of the second Cohn patent.

Other differences of minor importance also appear between the wrapper or envelope of the Eneas patent and the wrapper or envelope of the two Cohn patents. Such minor differences are, the use of a wrapper or envelope by Eneas to protect a book instead of to inclose a letter, as in an envelope; the necessary difference between a wrapper for a book and a wrapper for a letter; the different shapes required for the two different kinds of inclosures; and the difference between a book wrapper or envelope and a letter wrapper or envelope.

Undoubtedly the Eneas wrapper would be a merchantable article for protecting a book, and unmerchantable as an envelope for inclosing a letter; and, on the other hand, an envelope for inclosing a letter would be merchantable for that purpose but unmerchantable as a wrapper or envelope serving as a cover for protecting a book.

THE JOHNSON 1861 BRITISH PATENT.

The primary object or purpose of the invention [539] of this Johnson British patent is to make a board or tablet, for show or window use in displaying of advertisements and for other purposes, which is a different object or purpose than that defined in the two Cohn patents.

(Testimony of Oscar W. Bond.)

The object or purpose of the Johnson 1861 British patent is to treat a sheet of paper so as to present the appearance of stained glass, resembling in this respect the object and purpose of the Tudor and Jacobson patents, which have been considered and compared with the two Cohn patents.

The same differences pointed out in considering the two Cohn patents with the Tudor patent also exists in a comparison of the Johnson British patent with the two Cohn patents.

Other differences of minor importance are found between the article made under the Johnson British patent and the article made under the two Cohn patents. The advertising matter of the device of the Johnson British patent appears to be embodied in the transparent part of the device, and not permanently applied to the border or opaque portion as in the second Cohn patent. The opaque or defining line for the letters or other parts of the design in the device of the Johnson British patent is made around each letter or part of the design, instead of around a window of no particular outline, or a window characteristic of some symbol of trade as required in the two Cohn patents.

The Johnson device employs a plurality of opaque lines for defining a plurality of designs, while in the two Cohn patents the opaque lines surround a single design of a transparent nature. [540]

Undoubtedly the Johnson device would be a merchantable article for the intended purpose of displaying advertising and other matter, but would be un-

(Testimony of Oscar W. Bond.)

merchantable as an inclosure for a letter or mailing commodity; and, on the other hand, the article of the two Cohn patents would be merchantable as an envelope or mailing commodity and unmerchantable as a transparency for use in a window or other place to display advertising or other matter.

THE PEACE 1884 BRITISH PATENT.

The primary object or purpose of this Peace 1884 British Patent is to make cases or wrappers by which the inclosed contents can be seen when exhibited for sale.

The difference between the case or wrapper of this Peace British patent and the case or wrapper of the Cohn patents is the difference between a case or wrapper having a transparent window through which the inclosed article can be seen, as in the Peace patent, and an envelope or wrapper having a transparent window through which the address of the letter can be seen.

Another difference is that of making the transparent window of a separate piece of transparent material applied to the front of the case or wrapper so as to show what is contained in the case or wrapper, as in Peace, and in making the transparent window integral with the wrapper so as to show an address of a letter, as in the two Cohn patents.

Another difference between the Peace wrapper and the Cohn wrapper is the difference between a strip or border, formed of the paper of the wrapper and surrounding the edges of the transparent material, and a strip or border [541] of opaque material

(Testimony of Oscar W. Bond.)

applied to the face of the wrapper around the transparent portion, as in the two Cohn patents.

Another difference is the lack in the Peace patent of a transparent window having an outline characteristic of some symbol of trade, as required for the envelope or wrapper of the second Cohn patent.

Another difference is the lack, in the Peace wrapper, of permanent printed or advertising matter placed on the wrapper outside of the transparent window, as required for the wrapper or envelope of the second Cohn patent.

Another difference lacking in the Peace device is an outline and permanent printed or advertising matter so co-related as to indicate a particular brand of goods.

The differences above pointed out are the main differences between the wrapper of the Peace British patent and the wrappers or envelopes of the two Cohn patents.

Other minor differences of no special importance can be found between the wrappers, such, for instance, as the manner of cutting the paper to make the different types of wrappers; the manner of making the transparent windows in different wrappers, as shown by Peace; and the manner of presenting to view the contents so as to determine whether the wrapper contains needles, or fish-hooks, or some other article of trade, instead of having the outline of the transparent window indicate the nature of the article with which the user of the envelope deals, as in the second Cohn patent.

(Testimony of Oscar W. Bond.)

Undoubtedly the wrapper of the Peace British patent would be merchantable for the intended purpose for which the device is designed, just as much as the envelope of the two Cohn patents would be merchantable for the purpose intended. [542] Possibly the wrapper of the Peace British Patent could be used as a mailable commodity, by placing the addressee's name and residence thereon in writing or printing, and perhaps by placing a card with the addressee's name within the wrapper so that the name will appear back of the transparent window. This, however, would not be as convenient as would be the use of an envelope of the character found in the two Cohn patents.

A transparent window formed of material such as talc, gelatine, or other similar material, would be preferable for mailing purpose over a transparent window formed of nonelastic material, such as glass, which is naturally fragile, and would break in the mail unless protected in some manner. An elastic material, such as talc, gelatine, celluloid, and other similar materials, would not be open to the danger of breakage to such an extent as glass, but might not be as practical as a window made transparent in the sheet of paper.

THE HOLE 1894 BRITISH PATENT.

The primary object or purpose of this Hole 1894 British patent is the making of coin bags intended for the reception of coin, and such coin bag is constructed of paper or other suitable material with per-

(Testimony of Oscar W. Bond.)

forations through which the kind of coin can be observed.

The difference between the device of this Hole British patent and the device of the two Cohn patents is the difference between a bag having perforations through which the contents can be seen and an envelope or wrapper having a transparent window through which the address of a letter can be seen.

[543]

Another difference is leaving the perforation of the Hole coin bag unprotected or without the use of a transparent covering, while in the envelope of the two Cohn patents the opening or window is formed by the transparent section or portion of the envelope.

Another difference is the manner or method of applying colored matter to the bag of the Hole patent and the manner of applying colored matter to the transparent window of the two Cohn patents, in that the colored matter is applied by Hole to make prominent the openings, while in the two Cohn patents the colored matter is applied to make prominent the window or transparency.

Another difference is the lack, in the device of the Hole patent, of any outline resembling or characteristic of a symbol of trade, as in the second Cohn patent.

Another difference is the lacking, in the device of the Hole patent, of any permanent or advertising matter on the face of the bag outside of the perforations or the colored or opaque strips, or on the colored

(Testimony of Oscar W. Bond.)

or opaque strips as in the envelope of the second Cohn patent.

Another difference is the lacking of an outline and of printed or advertising matter so correlated as to indicate a brand of goods in the bag of the Hole patent and which is characteristic of the envelope of the second Cohn patent.

Other minor differences might be pointed out, such as the use of an open perforation with a black or opaque material surrounding the perforation, as in Hole, instead of a transparent window with an opaque border, as in the two Cohn patents; and also the difference in the intended use of the two devices.
[544]

Undoubtedly the bag of the Hole patent would be merchantable as a coin bag, just the same as the envelope of the two Cohn patents would be merchantable as envelopes. As a mailable commodity, undoubtedly the envelope of the two Cohn patents would be preferable over the bag of the Hole patent, in that the transparent window of the Cohn envelopes would enable the address of a letter to be observed, which would not be the case with the bag of the Hole patent.

THE PESCHEUX AND PAULET 1894 BRITISH PATENT.

The primary object and purpose of this Pescheux and Paulet British Patent is the production of a card by the use of which the effect of dress materials can be displayed.

(Testimony of Oscar W. Bond.)

The difference between the device of this Pescheux and Paulet British patent and the device of the two Cohn patents is the difference between a sheet of transparent material having an outline blocked out thereon by the use of an opaque border, as in the British patent, and the use of a sheet of paper which can be made into an envelope and having blocked out therein or thereon a transparent window by the use of an opaque border.

Another difference is that of having the outline presented by the transparent portion of the sheet in the form of a human being, as in the British patent, instead of having such outline of a plain nature or characteristic of some symbol of trade, as in the two Cohn patents.

Another difference is the difference between using the outline of the human figure, so as to show the effect of a dress pattern placed back of the card, as in the Pescheux [545] and Paulet British patent, instead of showing the name and address of the addressee of a letter placed within the envelope and back of the transparent window.

Another difference is the lacking of any permanent printed or advertising matter on the opaque border of the device of the British patent, as required for the second Cohn patent.

Another difference is the lacking in the British patent of any permanent printed matter in correlation with an outline characteristic of a symbol of trade, and by which a brand of goods is indicated, as required in the second Cohn patent.

(Testimony of Oscar W. Bond.)

Other minor differences also appear between the device of the Pescheux and Paulet British Patent and the two Cohn patents. Such minor differences are the use of the sheet in an outspread condition for the Pescheux and Paulet British patent, and the use of the sheet in a folded condition for the envelope of the two Cohn patents; the use of the sheet in the British patent to place over some dress material and the use of the envelope as a receptacle for a letter; and the manner of using the two devices.

Undoubtedly the device of the Pescheux and Paulet British Patent would be merchantable for the purpose intended, but not for use as an envelope or as a mailable commodity; and likewise the envelope of the two Cohn patents would be merchantable as an envelope and as a mailable commodity, but not as a means for displaying the appearance of some kind of dress goods. [546]

THE LEIGH 1894 BRITISH PATENT.

The primary object or purpose of this Leigh British patent is the same as the object and purpose of the Pescheux and Paulet British Patent.

The device of the Leigh British patent is the same as the device of the Pescheux and Paulet British Patent.

The same differences and the same merchantable qualities which have been pointed out in considering the Pescheux and Paulet British Patent with the two Cohn patents also exist as between the device of the Leigh British patent and the two Cohn patents. It

(Testimony of Oscar W. Bond.)

is therefore deemed unnecessary to repeat the differences in considering this Leigh British patent in comparison with the two Cohn patents.

THE WATTS 1895 BRITISH PATENT.

The primary object of this Watts British patent is to make a wrapper or other closure for the reception of tobacco and other goods, and so made as to enable the contents of the wrapper or package to be visible from the outside.

The invention of this Watts British patent is on the general line of the Peace 1884 British patent. Both patents cut an opening in the body of the wrapper and close such opening by means of a strip or piece of transparent material, such as gelatine, celluloid, or similar transparent material, and Watts, like Peace, refers to the use of glass as a transparent material, and like Peace prefers a flexible material, such as gelatine or celluloid.

The difference between the wrapper or closure of Watts and that of Peace is that Watts shows openings of [547] different shapes, such as triangular, circular, oval, diamond, and other shapes; and openings of varied shapes are not disclosed as fully in the Peace patent as in the Watts patent.

Inasmuch as practically the wrappers or closures of the Watts and the Peace patents, with transparent windows, are in substance the same, it is evident that the differences which have been pointed out in considering the Peace patent with the two Cohn patents also appear as differences between the wrapper or closure of the Watts patent and the wrapper or clos-

(Testimony of Oscar W. Bond.)

ure of the two Cohn patents.

Therefore, as the same conditions exist between Peace and Watts, as to the construction and use of the wrappers or closures, it is not necessary to repeat the differences which have been pointed out as existing between the Peace closure or wrapper and the device of the two Cohn patents, for the reason that these same differences appear between the wrapper or closure of Watts and the device of the two Cohn patents.

THE BOLDT 1897 BRITISH PATENT.

The primary object or purpose of this Boldt British Patent is the making of a packet, wrapper, or envelope, or whatever it may be termed, in such manner as to enable the nature of the contents to be observed, and at the same time have the transparent material employed for inclosing or covering the observation opening represent the initials of the firm, or be otherwise utilized for advertising purposes.

A difference between the wrapper or envelope of the Boldt British patent and the wrapper or envelope of the two Cohn patents is the difference between a wrapper or [548] envelope in which the transparent window is made by the use of an independent piece of transparent material, as in Boldt, and the window made integral with the paper of the envelope, or, so to speak, the difference between a two-piece transparent window envelope, as designed by Boldt, and a one-piece transparent window envelope, as designed by Cohn.

Another difference is the lack, in the wrapper or

(Testimony of Oscar W. Bond.)

envelope of the Boldt patent, of an opaque border surrounding the transparent window, as set forth in the two Cohn patents.

Another difference is the lack of any permanent printed or advertising matter on the wrapper or envelope of the Boldt patent, outside of or anywhere on the face of the wrapper or envelope, which permanent printed or advertising matter is a requisite of the Cohn second patent.

Another difference is the lack, in the wrapper or envelope of the Boldt British patent, of an outline characteristic of a symbol of trade, in corelation with permanent printed or advertising matter, by which a particular brand of goods is indicated.

Other minor differences can also be found, but the above differences are the most prominent and pronounced ones.

Minor differences appear in the form and shape of the wrappers or envelopes; between the location of the transparent sections or windows; and between the general design for which the transparent windows are employed,—Boldt using the transparent window to observe the contents, and Cohn using the transparent window to observe the address of the inclosed letter.

As a merchantable device for the purpose intended, [549] the Boldt wrapper or envelope is as merchantable as the device of the two Cohn patents, for the purpose intended in either patent, but as a mailable commodity possibly the device of the two Cohn patents would have more value than the device of the

(Testimony of Oscar W. Bond.)

Boldt patent, though it would be possible to utilize the wrapper or envelope of the Boldt patent for mailing purposes if so desired, subject, however, to any defect that might pertain to the use of a transparent window of elastic material as compared with the use of a transparent window integral with the body of the envelope.

THE SMITH & BROWNE 1901 BRITISH PATENT.

The primary object or purpose of this Smith & Browne British patent is the production of a combined opaque and transparent tablet, poster, label, ticket, or sign, to be used for advertising purposes and displaying public notices.

A difference between the device of this Smith & Browne patent and the device of the two Cohn patents is the difference between an advertising transparency of different forms and an envelope with a transparent window for displaying the address of a letter.

The Smith and Browne British Patent is without drawings, but from the printed text it would appear that the device of Smith and Browne lacks the permanent printed matter or advertising matter, the outline of some symbol of trade, and the correlation between the permanent printed or advertising matter and the outline, to indicate a particular brand of goods, as required for the second Cohn patent.

There are other minor differences between the [550] device of the Smith and Browne patent and the device of the two Cohn patents, such, for instance,

(Testimony of Oscar W. Bond.)

as the special manner of producing the transparent effect, or making the transparent section or window; the use for which the two devices are intended; one, the Smith and Browne, as an advertising means; the other, Cohn, as an inclosing means; and the natural differences which would be present owing to the different uses for which the devices are intended.

Undoubtedly, as a merchantable device for the intended use, that of the Smith and Browne patent would be equally as good as the merchantable properties of the Cohn device, for the purpose intended; but neither device would be merchantable for the purpose of the other device; and as a mailable commodity, the device of Smith & Browne would not be available, as it is not the form of an envelope.

So far as concerns differences or dissimilarities, and the other points embodied in the question, the foregoing comparison between the various devices of the patents, considered as belonging to the prior art, and the devices of the two Cohn patents, defines and points out such differences and dissimilarities as are found to exist between the devices.

Recess.

XQ. 80. Which one of all the patents you have considered most nearly approaches the Cohn patents in suit?

A. The Brown 1862 patent has the envelope containing the feature of a single-piece transparent window envelope, corresponding to the envelope of the Cohn patents, without having the opaque border around the transparent [551] window, and which

(Testimony of Oscar W. Bond.)

it would be necessary to have in order to make the envelope of the Brown 1862 patent the fac-simile of the envelope of the first Cohn patent. The envelope of the Brown 1862 patent, in order to make the envelope of the Cohn second patent, would require the addition of permanent printed or advertising matter and making the transparent window in outline resembling a symbol of trade.

There is no one patent which meets the requirements and conditions, in all respects of both of the Cohn patents; but the Brown patent meets the requirements of both Cohn patents as to a single-piece transparent window envelope without the added border around the window.

Owing to the different characteristics between the envelope of the two Cohn patents as meeting the characteristics special to the second Cohn patent and not found in the first Cohn patent, the Boldt 1897 British patent most nearly resembles the characteristic feature of a transparent window having an outline resembling a symbol of trade or a trade name or a trademark, requiring, however, the addition of an opaque border to the design of the Boldt British patent, and also the addition of permanent printed or advertising matter, in order to produce the complete envelope of the second Cohn patent.

XQ. 81. Still keeping in view the previous question, which of the two patents,—Brown U. S. 1862 or Boldt British—each standing separate and alone, most nearly approaches the second Cohn patent, as represented by the claims of said patent; that is, of

(Testimony of Oscar W. Bond.)

the one-piece window envelope with the characterized window envelope and associated advertising matter?
[552]

A. The Brown would not have the transparent window in outline characteristic of an emblem of trade, combined with permanent printed or advertising matter on the opaque face, and would only meet the requirements of the second Cohn patent as to being a one-piece transparent window envelope.

The Boldt 1897 British patent meets completely the characteristic of a transparent window in outline of some symbol of trade, or a trade name, or a trademark, as required for the second Cohn patent, but is not a one-piece transparent window envelope with an opaque border around the window and with permanent advertising matter or printed matter, co-acting with the outline of the window to indicate a particular brand of goods.

As between the two patents, I would consider that the Boldt British patent has therein more of the characteristics of the second Cohn patent than does the Brown 1862 patent, in that the Boldt British patent has a transparent window with the characteristic of such window set forth in the Cohn second patent.

XQ. 82. So your answer to XQ. 80 would be or is that the Brown U. S. 1862 patent is the best single reference for the first Cohn patent; and that the Boldt 1897 British Patent is the best single reference for the second Cohn patent. Is that right?

A. Yes, though I would say that Brown is pertinent to the feature of a single-piece transparent win-

(Testimony of Oscar W. Bond.)

dow envelope, which feature is common to both the Cohn patents. [553]

XQ. 83. Now, looking at the Defendant's Exhibit Osborne's Art Calendar, and without waiving any of the objections heretofore entered against the same, I would ask you to assume the same impartial attitude and spirit of mind that you have in answering XQ. 77, presupposing that you have been asked this XQ. 77 with regard to the Osborne Art Calendar, simply substituting the latter for the patents mentioned in XQ. 77.

A. The present question requests me to take up the disclosures of the two Cohn patents in connection with the disclosures of the Osborne Art Calendar for 1900, and point out the differences and dissimilarities between what is found in the two Cohn patents and the said Osborne Art Calendar, for the purpose of aiding the Court to see both sides of the question.

Both Cohn patents pertain to envelopes, and in both is found a transparent section or window surrounded by a border of opaque material. It is stated that the object of the colored or opaque border is to give definition to the window opening, and to obliterate or cover up the otherwise rough unfinished outline of the window, such rough unfinished outline resulting from the encroachment of the oil or grease, or other substance by which the transparent window is produced, beyond the limits of the window.

Briefly stated, Cohn, in both of his patents, em-

(Testimony of Oscar W. Bond.)

plays a colored or opaque border for the purpose of giving definition to the transparent window and obliterating or covering up any defects around the edges of the window.

The Osborne Art Calendar of 1900 shows, in instances pointed out in my direct examination and many other instances, [554] the use of a border, colored or opaque, by which a picture or reproduction of some colored work is defined, and this border, as evidenced by pictures or reproductions in the book, serves also to blot out or cover up any defect in the printing of the picture or reproduction by running over of colors around the edges of the picture or reproduction.

The differences and dissimilarities between the use of a border of opaque or colored matter, as in the Cohn patent, and a border of opaque or colored matter around a picture or reproduction, as in the Osborne Art Calendar, is the difference between covering up an unsightly edge produced by oil or grease and a corresponding edge produced by an overrun of colors.

Another difference is that the colored or opaque border, as employed by Cohn in his two patents, brings out the defining outlines of a transparent window, while such border, as employed in the Osborne Art Calendar, defines and brings out the limits of a picture or reproduction.

The differences named are the main differences found in the use of a border as between the Cohn two patents and the Osborne Art Calendar. Other

(Testimony of Oscar W. Bond.)

minor differences of no particular importance can also be pointed out. As, for instance, the manner of applying the colored or opaque border; the different objects or articles to which it is applied; and the different use or purpose for which the articles are intended.

The differences as herein pointed out distinguish the application and use of a border as applied to a transparent window and as applied to a picture or reproduction in color, and disclosed, respectively, in the two Cohn patents [555] and in the Osborne Art Calendar.

Outside of the use of a colored or opaque border for defining purposes, and for concealing or obliterating rough edges, there is nothing in the Osborne Art Calendar pertaining specifically to envelopes having a transparent window, either of a plain configuration or in outline resembling a symbol of trade. The Osborne Art Calendar does have, accompanying the picture or reproduction in colors, a printed name which pertains to the subject of the picture or reproduction, and which is a permanent printed statement on the face of the paper having the picture or reproduction thereon.

XQ. 84. Have you ever had any practical experience as a lithographer, or as a worker in three-color work?

A. No, not as an operator of a press; though I have seen three-color presses at work.

XQ. 85. Turning to the second Cohn patent, Mr. Bond, the object or purpose of the transparency is

(Testimony of Oscar W. Bond.)

that it allows the address to be read on the inclosure.

That is true, is it not?

A. Yes, that is one of the objects or purposes of the transparent window.

XQ. 86. That is also the object or purpose of the window of the Heinz envelope, is it not? A. Yes.

XQ. 87. Both envelopes, that of the Cohn second patent and the Heinz, use a compound, in making the transparency, which creeps into the body of the surrounding opaque stock of each envelope. That is true, is it not? [556]

A. The Heinze envelope evidently uses an oily compound for making the transparency, and an envelope made under the Cohn second patent would employ an oily compound, such as paraffine oil, as stated in the specification of the patent.

XQ. 88. In both the Cohn and the Heinz envelopes, the effect of the creeping of the oil is covered by a border of some sort; is that not also true?

A. Yes, that is the purpose, or one of the purposes, for which the border is used.

XQ. 89. This border of Heinz, I believe you have already testified, is made to represent the appearance of a cucumber. That is correct, is it not?

A. Yes, by forming the periphery or outer edge of the border to resemble the shape of a cucumber.

XQ. 90. Look at the drawing, Figure 1 of the second Cohn patent, and state what the shape of the border therein shown represents.

A. The periphery or outer edge is in outline representing a cucumber, corresponding to the outline

(Testimony of Oscar W. Bond.)
of the edge of the transparent window.

XQ. 91. Looking at the cucumber outline shown in Figure 1 of Cohn and the cucumber outline used by Heinz; are they not both symbols of trade?

A. The cucumber outline might be termed a symbol of trade; but an outline presented by a border and not by a transparent window would not be the outline called for under the Cohn second patent.
[557]

XQ. 92. I am not calling for a construing of the claims, but simply for the facts of the case—that the cucumber outline in each case, however formed, represents, in itself, a symbol of trade. Is not that perfectly true?

A. Certainly, just the same as the outline of a pear, or the outline of a peach, or the outline of an ear of corn, on a label applied to a can, would indicate the goods supposed to be contained in the can.

XQ. 93. Looking at the “Heinz” envelope, which I hold before you, with the face presented to your view, what is there displayed which indicates a particular brand of goods?

A. The representation of a cucumber, formed by the exterior or outside edge of the border surrounding the window; which would be the same, in effect, if the window were omitted.

XQ. 94. How about the word “Heinz”?

A. Inasmuch as “Heinz” or the Heinz company is known as the manufacturer of pickles, including cucumbers, the border, in and of itself, and with the word “Heinz” imprinted within the border, would

(Testimony of Oscar W. Bond.)

indicate the concern just the same if the transparent window was not present. My recollection is that the trademark of the Heinz company is the representation of a cucumber, with the word "Heinz" printed thereon, and usually this is accompanied by the word "57 Varieties," forming, however, as I understand it, no part of the trademark.

XQ. 95. So that, in this Heinz envelope, the representation of the outline of a cucumber, associated [558] with the word "Heinz," immediately conveys to your mind the goods of business of the defendant company? Is that true?

A. Yes; and it would be precisely the same if I should see a label, presenting in outline a cucumber, and having within the body of the cucumber the word "Heinz."

XQ. 96. That would be also true, would it not, by seeing an envelope like that shown in Figure 1 of the second Cohn patent?

A. Hardly so, especially if accompanied by the name "John Doe, 57 varieties."

XQ. 97. I meant to say that the Cohn window envelope and its representation of a pickle, associated with such advertising matter as you are accustomed to seeing associated with the name and trademark of the defendant, that this Cohn envelope would immediately present or call to your mind the goods or business of the defendant. In other words, assume the word "Heinz" substituting for "John Doe."

A. Yes, from the outline presented by the trans-

(Testimony of Oscar W. Bond.)

parent window when representing a cucumber.

XQ. 98. The position of the word "Heinz" on the envelope, either appearing where the words "John Doe" appear in Figure 1 of Cohn, or inside of the border, as in Heinz, makes no material difference, or any difference in fact, does it, as far as the colocation of the word and cucumber are concerned, in indicating the particular brand of goods?

A. No, but it would make a difference in pointing out the manufacturer. If the name of the manufacturer were imprinted on the outside face of the envelope, it would be present whether the envelope contained an inclosure or [559] not, while if printed on the inner face of the back of the envelope it would not appear, when there was an inclosed letter in the envelope. In the one case, as contemplated by Cohn with his envelope, the name is in correlation to the symbol of trade, and permanent on the face of the envelope where it can always be seen. In the other case, as contemplated in the Heinz envelope, the name of the manufacturer would only appear when the envelope was empty.

Adjourned until Friday, December 16, 1910, 10 o'clock A. M.

Chicago, Illinois, December 16, 1910.

Parties met pursuant to adjournment. Present as before.

XQ. 99. By my last question, I meant the envelope pure and simple as an envelope, without an inclosure. In that case, does it make any difference whether the words appear as they do in the Heinz

(Testimony of Oscar W. Bond.)

envelope as shown in Figure 1 of the Cohn; assuming, of course, that the word "Heinz" is substituted for the words "John Doe"?

A. So far as concerns the word "Heinz" in correlation with a cucumber, there would be no difference whether the word "Heinz" appeared outside of the representation in outline of a cucumber produced by the configuration of the edge of the cut, or whether such name appeared within the space occupied by the representation of the cucumber.

XQ. 100. Which envelope, to your mind, is to be preferred,—the Cohn envelope or the so-called Heinz envelope?

A. Personally, the Heinz envelope would be my preference. Other persons might prefer the Cohn envelope, [560] in which the outline characteristic of a symbol of trade was produced by the transparent window instead of by the border.

XQ. 101. Taking all the patents, U. S. and foreign, which you have heretofore considered, and also the Reese patent, which has been offered in evidence but which I do not understand is relied on for anticipation, but which patent no doubt you are familiar with, and also the Callahan 1902 patent, which counsel now informs me he intends to offer in evidence and which you are no doubt familiar with, and also taking the two Cohn patents here in suit, which of all of them does the Heinz envelope come nearest to?

A. The two Cohen patents, while both belong to

(Testimony of Oscar W. Bond.)

the single-piece transparent-window type of envelopes, possess different characteristics outside of this one common feature. The plain window of a transparent nature of the first Cohn patent does not fulfil the requirements of the transparent window of the second Cohn patent, in presenting an outline characteristic of some symbol of trade; nor does it have the feature of permanent advertising or printed matter so correlated on the opaque border around the transparent window as to indicate, with the outline of the window, a particular brand of goods.

Under these conditions, it seems to me that the Heinz envelope is more like the envelope of the first Cohn patent, in being a single-sheet transparent window envelope, with a border of opaque material surrounding the transparent window, and minus any permanent printed matter or advertising matter on the border outside of the transparent window. [561]

I would, therefore, regard the first Cohn patent as the nearest resemblance, in every detail, to the Heinz envelope.

The envelope of the Brown 1862 patent is also a near approach to the Heinz envelope, as it discloses a single-sheet transparent window envelope without any opaque border around the window, but having the feature of displaying a name through the transparent window, as in the Heinz envelope; differing, however, in having the name on a card separate from the envelope, instead of having the

(Testimony of Oscar W. Bond.)

name printed on the inner face of the back of the envelope, as in Heinz.

While the envelope of the Brown 1862 patent has a transparent window through which a name can be observed, located back of the transparent window, as in the Heinz envelope, it lacks the feature of an opaque border around the opaque window, which is found in the Heinz envelope. Therefore, it seems to me that, taken as a whole, the envelope of Heinz is nearest to the envelope of the first Cohn patent than it is to the envelopes or wrappers of the patents referred to in the question, confining the comparison to single-sheet transparent window envelopes.

XQ. 102. Your answer, then, resolves itself to this: the first Cohn patent. That is true, is it not?

A. Yes.

XQ. 103. Do I understand that your answer would be the same, assuming that the previous question meant as it was intended to mean, Which patent is most like the Heinz envelope, both as a merchantable envelope proper for mailing [562] purposes, and as an advertising novelty of the nature and character embodied in the Heinz envelope?

A. Yes, my answer would be the same, for the reason that the Heinz envelope uses a plain window, such as illustrated in the Cohn first patent, with an opaque border surrounding the window, and does not use a window which, in and of itself, presents an outline characteristic of some symbol of trade,

(Testimony of Oscar W. Bond.)

associated with which on the opaque border is permanent printed or advertising matter.

The Cohn first patent lacks any printed or permanent advertising matter on the border for the envelope shown in Fig. 1, and also lacks any transparent window having an outline characteristic of a symbol of trade; and this is also true of the Heinz envelope.

It is true that the first Cohn patent describes and shows an envelope having a transparent window with an outline characteristic of some symbol of trade with permanent printed or advertising matter on the opaque face of the envelope outside of the transparent window, but this special envelope constituted the subject matter of the second Cohn patent, and is not found in the Heinz envelope.

It is also true that the window of the Heinz envelope is not a rectangular window with straight line sides and ends, but is a window resembling or like the shape of the window in Figure 2 of the Boldt 1897 British patent, and in the Callahan 1902 U. S. patent; but, notwithstanding this difference in the outline of the window, between the Heinz envelope and the envelope of the first Cohn patent, it seems to me that the envelope of the first Cohn patent is the nearest one to the Heinz envelope.

[563]

XQ. 104. The word "Heinz" on the Heinz envelope, which appears inside of the cucumber shape, is on the opaque stock of the envelope, is it not?

A. Yes, it is on the inner face of the opaque back

(Testimony of Oscar W. Bond.)
of the envelope.

XQ. 105. It is not visible nor in association with the cucumber outline, except when the envelope is viewed from its face side. Is that not true?

A. Inasmuch as the name "Heinz" appears in connection with the transparent outline, when viewed from the back of the envelope, I do not consider that it is visible only from the front of the envelope in connection with the border and not a transparent window having the outline of the cucumber formed by the periphery or outer edge of the border.

XQ. 106. That is, if you hold the Heinz envelope up to the light and view it from the back by transmitted light, it so happens that you can see the letters making up the word "Heinz," but that the word "Heinz" then reads backwards. That is true, is it not?

A. Hardly, the letter "N" would be upside down, but the other letters would appear correct. There would be no difficulty in reading the word as "Heinz."

XQ. 107. Without splitting hairs or controverting the obvious, the same would be practically true of the words "John Doe 57 Varieties" in Fig. 3 of the first Cohn patent, and Fig. 1 of the second Cohn patent, when you view those figures from the reverse side of the sheet by transmitted light. Is that not true? [564]

A. Possibly, the words "John Doe" and "57 Varieties" might be visible with a thin envelope,

(Testimony of Oscar W. Bond.)

but it strikes me that with an envelope of the character of the Heinz envelope these words, if printed on an opaque border around the transparent window, would not be visible from the back of the envelope, while they would be visible viewing the front of the envelope.

XQ. 108. With the Heinz envelope laying flat on the table before you, face up, the word "Heinz" appears on the face of the envelope in association with the cucumber outline, does it not?

A. Yes, such outline being produced by the periphery or outer edge of the opaque border and not by the outline of the transparent window.

XQ. 109. Turning to the first Cohn patent, and looking at the single claim thereof, do I understand that it is conceded that the Heinz envelope embodies the combination of that claim?

A. In my opinion, the Heinz envelope embodies the claim of the first Cohn patent.

Redirect Examination.

(By Mr. BANNING.)

RDQ. 110. Your attention has been called to the Callahan 1902 patent, which I intend to offer in evidence. Please state briefly the kind of envelope that is shown and described in the Callahan patent.

A. The envelope of the Callahan patent is one in which the main body or portion of the envelope is of thick or opaque material that will prevent an inspection of the contents, and which is provided on its front or [565] address face with a transparent

(Testimony of Oscar W. Bond.)

window through which the address of the party for whom the letter is intended can be seen. This envelope of the Callahan patent has the transparent window made by cutting out a part of the front face of the envelope, leaving an opening of the required size, and then covering this opening by a strip of transparent material, such, for instance, as very thin rice paper, through which the sending address upon the inclosure can be observed.

This envelope of the Callahan patent can be termed a two-piece transparent window envelope, as contradistinguished from the one-piece transparent window envelope. The window of the Callahan envelope is made prominent by the edge of the body of the envelope around the opening, and such prominence is obtained by the use of colored paper for the body of the envelope.

RDQ. 111. Read the sentence that you have just referred to about the use of colored papers, in your answer to this question.

A. The statement is found, beginning with line 91, column 2, of the first page of the specification, and is as follows:

“Very thin colored paper, as manila paper, might thus be advantageously used for the comparatively opaque portion of my envelope, as the color would prevent inspection of the envelop’s contents. Very cheap manila paper, in fact, is of special utility in the practice of my invention. Other colored papers may be employed, or even black paper may be employed

(Testimony of Oscar W. Bond.)

for the envelopes, black paper, in fact, presenting an advantage over papers of other colors in that a striking contrast may be provided between the address appearing through the envelope and the balance of the envelope.” [566]

RDQ. 112. I show you an envelope that I received a year ago, and ask you how far, if at all, it embodies the envelope described in this Callahan patent.

A. The envelope shown to me embodies in its structure the invention of the Callahan patent.

By Mr. BANNING.—Defendant’s counsel offers in evidence the envelope shown to the witness, as an illustration of the Callahan patented envelope, and asks to have the same marked “Defendant’s Exhibit Callahan Patented Envelope.”

Defendant’s counsel also offers in evidence the Callahan Patent No. 701,839, of June 10, 1902.

RDQ. 113. How long have you seen envelopes like this Callahan patented envelope on the market or in use? A. For seven or eight years.

RDQ. 114. I show you an envelope, and ask you to look at the same and state how far, if at all, it embodies the envelope described in the Brown 1862 patent.

Objected to as no proper foundation laid; the question is leading; and that there is nothing in the evidence to show that this envelope now submitted to the witness is or was made in accordance with any disclosure in the Brown patent.

A. The envelope shown to me embodies the invention of the Brown 1862 patent. [567]

(Testimony of Oscar W. Bond.)

By Mr. BANNING.—Defendant's counsel offers in evidence the envelope last shown the witness, as an illustration of the Brown 1862 patent envelope, and asks to have the same marked "Defendant's Exhibit Brown 1862 Patented Envelope."

By Mr. TOWNSEND.—The receipt in evidence of the last-named exhibit is objected to as irrelevant and immaterial; and also for lack of foundation.

RDQ. 115. In what way, if at all, does the Defendant's Exhibit Brown 1862 Patented Envelope differ from the Defendant's Exhibit Transo Company Stock Envelope?

Same objection.

A. In the lack of a border of opaque material around the transparent window.

RDQ. 116. So far as the question of utility, involved in inclosing and protecting a letter and performing the work and function of an envelope, are concerned, and disregarding the matter of appearance and ornamentation, what difference, if any, is there between an envelope without a border around the transparent window, like this Brown 1862 Patented Envelope, and one with a border around the window, like the Transo Company's Stock Envelope? A. No difference whatever. [568]

By Mr. TOWNSEND.—Does counsel want to stipulate that the so-called Brown envelope just referred to is a specimen envelope made on Transo stock, and rendered transparent by the Transo process by the Transo company, and being similar to the Transo Stock Envelope, except the omission of the border

(Testimony of Oscar W. Bond.)

and the inside tint?

By Mr. BANNING.—Defendant's counsel states that he has not been informed as to the exact facts, but that, as he now understands, the envelope used to illustrate the Brown 1862 patent, being the envelope inquired about, was made by the Transo company on the same kind of paper used for their Stock envelopes, and the same printing plates for applying the oil used in making it that is used for the Stock envelopes; but with the tinted matter omitted from the inner side of the paper and the ring or border omitted around the window on the outside.

Recess. [569]

RDQ. 117. I call your attention to the Busch English patent No. 11,876 of 1896, which was offered in evidence the other day, and ask you to explain what you understand to be shown and described in this Busch patent, which I believe you have examined at the Public Library of this city, and of which I now furnish you a copy of the specification in type-writing.

A. I have examined a copy of this Busch 1896 British Patent in the Public Library of Chicago, and have also examined the typewritten copy of the specification and claims of said patent.

The invention set forth in this Busch 1896 British Patent relates to envelopes for letters and other papers; and the object of the invention is to have, in the envelope, a transparent section or window through which the address of the letter can be read, thus

(Testimony of Oscar W. Bond.)

avoiding the writing or printing of the address on the envelope.

It is provided that in some cases the front of the envelope is made of transparent material and the back opaque, or *vice versa*; and it is also provided that a portion of the front may be transparent, with the rest of the envelope opaque, or the back and portion of the front may be transparent.

The manner of making the transparent portion or window according to the Busch patent is stated as follows:

“The desired contrast or difference may be produced either by choosing two different kinds of paper or printing with opaque coloring matter [570] applied to a portion of the envelope.”

This statement clearly implies that that portion of the envelope which is transparent is set off or presented by printing the balance of the envelope, outside of the transparent portion, with opaque coloring matter, so that an envelope would be produced having a transparent section or window in its face and surrounded by a border of coloring matter extending over all of the face of the envelope outside of the transparent portion.

The drawing, accompanying the Busch specification and forming part of the patent, has three figures, of which Figure 1 shows an outside view of the face of an envelope with an enclosed letter having an address thereon, which address shows through the transparent envelope. Figure 2 is a view similar

(Testimony of Oscar W. Bond.)

to Fig. 1, with half of the front of the envelope torn off, exposing the address underneath. Fig. 3 is a cross-section of the envelope on the line A-B of Fig. 2.

Both Figs. 1 and 2 show a border around the outer edge of the envelope, with the portion within the border transparent, and apparently this border is also around the back of the envelope as well as the front, and in view of Fig. 3, which shows a continuous line, it is evident that the edge border is formed by printing the same with an opaque coloring matter, as indicated in the specification.

The drawings, Figs. 1 and 2, show nearly the entire face of the envelope, as transparent, which would comply with [571] one way of making the envelope with the front and back transparent; and for making an envelope with a portion of the front transparent only, this coloring matter, to give an opaque appearance to the envelope, would be printed on the face of the envelope, extending from the transparent portion or window to the edge of the envelope.

The envelope of this Busch patent would be an envelope having the entire front practically transparent, or an envelope having a portion of the front transparent, and having printed on the front, outside of the transparent portion, an opaque color, leaving only the section or portion which is transparent through which to observe the address on the inclosed letter, the letter being folded, as set forth in the specification of the Busch patent, so as to dis-

(Testimony of Oscar W. Bond.)

close its address through the transparent portion of the envelope.

RDQ. 118. Please compare the envelope of the Cohn patents sued on with the envelope shown and described in this Busch British Patent, and point out the similarities and differences that you observe between the two, and give us your opinion as to what was required, or the character of the act involved, in making the Cohn envelope over the Busch 1896 envelope.

A. The envelope of the two Cohn patents is a one-piece transparent window envelope, and this is also the case with the envelope of the Busch patent.

The envelope of the two Cohn patents has a transparent [572] section or window through which the address of an enclosed letter can be seen, and this is also true of the envelope of the Busch patent.

The envelope of the Cohn patents has an opaque coloring matter applied to the face of the envelope outside of the face occupied by the transparent portion or window, which opaque matter, in one form of applying the same, set forth in the Cohn patents, extends solid over the face of the envelope outside of the transparent portion or window; and this is also true of the envelope of the Busch patent, in applying opaque coloring matter to its face.

The envelope of the Cohn patents and the envelope of the Busch patent have the same features of construction, in that they each are one-piece transparent window envelopes; they each have a transparent portion or window through which to observe the address

(Testimony of Oscar W. Bond.)

of an enclosed letter; and they each have opaque matter applied to the envelope face outside of the transparent window.

The difference between the envelope of the two Cohn patents and the envelope of the Busch patent is the difference between making the transparent window, as in Cohn, by the use of a proper compound applied to paper which is semi-transparent, so to say, and using, as in Busch, a paper which is transparent, thereby avoiding the necessity of using any compound in order to make the transparent section or window.

Another difference, which is applicable only to the [573] second Cohn patent, is the lack, in the envelope of the Busch patent, of a transparent window in outline characteristic of some symbol of trade, and the use, with the outline of such window, of any permanent printed or advertising matter, which would indicate, in connection with the outline, a particular brand of goods.

It would require, in order to produce the Cohn envelope, over what is found described for producing an envelope of a similar character in the Busch patent, the use of a paper which was semi-transparent instead of entirely transparent, and using a transparent-making compound for bringing out the window. This would be the act of anyone skilled in the making of transparent portions or sections in paper by the use of a proper compound, which would be a mechanical act and not require any inventive skill in so doing.

(Testimony of Oscar W. Bond.)

RDQ. 119. You were asked by the complainant's counsel, on cross-examination, to point out the differences which you found between the Cohn envelopes and what was disclosed in the prior patents, to which your attention had been called on direct examination. Please state what the fact may be as to whether or not, in studying these prior patents and in making up your mind in reaching your conclusions, you had considered or disregarded the various differences that you pointed out in compliance with the request of complainant's counsel. [574]

The question is objected to if it is designed to impeach the witness' answer to the cross-examination referred to.

A. The various differences pointed out by me, in my cross-examination, as existing between the subject matter of the Cohn patents and the subject matter of the prior patents considered by me, were observed by me in reaching my conclusions as to the status of the two Cohn patents.

RDQ. 120. Then the conclusions which you expressed on your direct examination were reached and your opinions expressed with these various differences in view and in mind? A. That is correct.

RDQ. 121. How far, in your opinion, do the differences that you pointed out on cross-examination, affect that question as to the novelty, invention and patentability of the Cohn envelopes?

The question is objected to as incompetent, in view of the witness' interest on behalf of the defendant or those behind the defendant; that the question calls

(Testimony of Oscar W. Bond.)

for the self-serving opinion of the witness; and the usurpation of the functions of the court. [575]

A. The differences which were pointed out by me on cross-examination do not, in my opinion, affect the question as to the novelty, invention, and patentability of the Cohn envelopes. The similarities between what is disclosed by the prior patents and the use of the same process for the same purpose is what controls or affects the question of novelty, invention, and patentability in patents.

Recross-examination.

(By Mr. TOWNSEND.)

RXQ. 122. What, in your opinion, is patentable novelty?

A. Briefly stated, doing that which has been done before in a new way or under new conditions, or accomplishing an end or result by new means not before used for accomplishing analogous ends in other arts; or using a new type of machine for a new purpose and accomplishing new results by so doing. Using an old machine without any change and accomplishing a different result would not constitute patentable novelty, as I understand it. The use of a device in connection with a new article, where the device had previously been used with an article of another kind, but accomplishing the same end as a new article, would not constitute patentable novelty. As an illustration, the use of a ground globe around an electric light would be the same as using a ground globe around a gas light, and its use around an electric light would [576] not be considered patent-

(Testimony of Oscar W. Bond.)

able novelty, though it might improve the light. It would be a mere double use, so to speak.

RDQ. 123. What is your definition of invention?

A. Briefly stated, the use of the inventive faculties in carrying forward an idea, either in perfecting a machine, or a process, or some device by which an old result is accomplished in a different manner, or an entirely new result is attained. It would not be invention to transfer a device from one machine to another where the device performed the same office in both machines and where the use of the device did not affect or improve or change the operation of the machine to which it was transferred. That would be mechanical skill, not requiring invention.

RXQ. 124. Does your answer mean that you cannot take an element from one machine or art and combine it with other elements in another machine or art, even though that particular element by itself performs, as far as it is concerned, the same function in both machines or arts, and still have invention in the new combination?

A. The entire machine would be the invention and not the transfer of, say, gearing from a printing press to a threshing machine, the gearing performing the office in both machines. That would be the work of a mechanic who, seeing that the gearing was operative in connection with [577] the cylinder of a printing press, knew that it would be operative with the cylinder of a threshing machine. It would not be the gearing that constituted the invention, but it would be the other mechanisms or devices go-

(Testimony of Oscar W. Bond.)

ing with the gearing to make the complete threshing machine that would be the invention, if there was any invention.

RXQ. 125. In other words, the invention would be in the combination and not in the individual parts. Is that not true?

A. Yes, if the combination was new.

RXQ. 126. Take a garment supporter, for instance, and assume it was old to use a metal pear-shaped loop and a solid head or button co-operating therewith; and that it was also old (but not in garment supporters) to use rubber buttons which will yield easily to sudden pressure and yet not abrade the fabric of a buttonhole, for instance, would there be any invention, in your opinion, in substituting the rubber head or button for the solid head or button in the combination with the old pear-shaped loop?

A. If the rubber button were used in other places and with a companion device which would coact therewith in the same manner as the pear-shaped loop coacted with the rubber button, it strikes me that transferring the rubber button to a peculiar shaped loop, where it performed the same [578] office as it did in the old device, would not constitute invention. But, if the rubber button were used, for instance, as a shirt-stud, and in a different manner from what its use would be with a pear-shaped loop, there might be invention in so combining the two as to produce a new result—that of not abrading the fabric. It seems to me that, in order to determine the question of invention and noninvention of

(Testimony of Oscar W. Bond.)

a rubber button with a metal pear-shaped loop, there should also be presented the fact as to whether this same rubber button was used with a loop not pear-shaped, or a loop which, if the rubber button was not present, would coact with a solid button so as not to abrade the fabric. Practically speaking, the use of a rubber button with a pear-shaped loop, if such rubber button had been used with a nonpear-shaped loop and performed the same office, the transfer of the rubber button to a pear-shaped loop would not change the nature of its use or its effectiveness in use, and therefore, in my opinion, such transfer would not be invention.

I presume the question is based on the sustenance of, I believe it is, the Gordon patent for a hose or garment supporter, and if I recollect rightly the patent was sustained on the showing made that, as the button of rubber had been used, its use was in a different manner than the claimed use in the Gordon patent. It always seemed to me that the decision was based on grounds not tenable if the prior use of the rubber button had been practically the same as its use [579] with a pear-shaped loop.

RXQ. 127. In other words, you are not able to bring yourself to agree with the Court in sustaining the Gorton patent?

A. Hardly that, but it always seemed to me that, if it had been clearly brought out on the defense that there was no utility obtained by the use of a rubber button with a special form of loop over what was obtained by the use of the same button with a differ-

(Testimony of Oscar W. Bond.)

ent form of loop, the Court would have not sustained the Gorton patent.

RXQ. 128. Assume in that case it had been shown that all the rubber button did in the Gorton garment supporter was to resist the tendency of the smooth button to slip, although firmly gripped, and yield sufficiently, while resisting the slipping, to obviate the abrasion of the fabric; also assume that it was a matter of common knowledge, at the time of the Gorton invention, that rubber is neither as hard or unyielding as metal or bone; also assume that it was shown to have been of common knowledge that rubber had the property of clinging, and that it had been used on shoes, stairway steps, and for mats and floor coverings to prevent slipping; also assume that it had been used for buttons in order that its elasticity would permit the button to yield easily to sudden pressure and yet not abrade the [580] fabric of a button-hole, as in the instance of a rubber collar stud; what is your opinion as to invention being involved, and as to your agreeing or disagreeing with the Court in sustaining the Gorton patent, if it was sustained?

A. It certainly could not be contended that Gorton was the discoverer of the yieldability of rubber, nor that he was the discoverer of the fact that rubber would cling under certain conditions, nor the further fact that the elasticity of the rubber buttons would permit it to yield easily under pressure, as that would be the natural property of the rubber. This narrows the question down as to whether the invention,

(Testimony of Oscar W. Bond.)

if any there was, pertained to the rubber button having its natural properties and not to discovery of Gorton, or whether it pertained to the use of this button with its old properties with the peculiar shaped metal loop, by which a new result, not before had in garment supporters, was attained. If, however, the same result had been attained by the use of a metallic loop not of the special pear-shape, the use of the rubber button with the pear-shaped loop, or the combination of the two would lack invention, in that old devices were used and the same result attained as was attained with the use of one of the old devices and another form of loop. On these grounds and under the conditions stated by me, it seems to me that the Court should not have sustained the Gorton patent. [581]

RXQ. 129. I hardly think the witness quite caught the question, and I will ask that it be re-read, and that it is to be assumed that the pear-shaped loop and solid head were old. With that amendment, I would ask if you believe invention was involved, and if you agree or disagree with the court in the Gorton case?

A. That which is inherent in a substance is not patentable. The application of the substance in a peculiar way, by which advantage is taken of its inherent quality or characteristics, might be patentable. Assuming, as stated in the question, that a pear-shaped loop was old, and its use with a solid button would tear the cloth or material, and assuming that Gorton was the first to use a rubber button

(Testimony of Oscar W. Bond.)

for any purpose where it was not desirable to cause an abrasion of the cloth or fabric in connection with the metal loop, its use might constitute patentable novelty. But, if Gorton was not the first to use a rubber button with a metal loop for preventing abrasion, then the use of such rubber button with a special form of metal loop which was old would not be invention, and to this extent I do not agree with the Court in sustaining the Gorton patent.

RXQ. 130. Turn to the Busch British patent, Mr. Bond, please, and also please to read XQ. 77, and make the same summary as to *difference and dissimilarities*, under the same conditions that you did with respect to the various other patents in answer to XQ. 77. [582]

A. A difference between the envelope of the two Cohn patents and an envelope made in accordance with the Busch patent is the difference between semi-transparent paper treated with a compound to produce a transparent section, as in the Cohn patents, and the use of a transparent paper requiring no treatment to produce a transparent portion or window, as in Busch patent.

Another difference, applicable to the second Cohn patent only, is the lack in the Busch patent of any description or illustration pointing out the transparent window which is to have an outline characteristic of some symbol of trade.

Another difference, likewise applicable only to the second Cohn patent, is the lack in Busch of any showing or description setting forth the use of per-

(Testimony of Oscar W. Bond.)

manent printed or advertising matter on the face of the envelope.

Another difference, also applicable only to the second Cohn patent, is the lack in the Busch patent of anything which discloses the use of an outline characteristic of some symbol of trade in connection with permanent printed or advertising matter on the opaque border of the envelope, which, in connection with the outline, indicates a particular brand of goods.

The utility of the Busch envelope as a mailable commodity is different only in the use of the transparent paper over a semi-transparent paper; and the merchantableness of the Busch envelope would be practically the same as that of the envelope of the Cohn patents, so far as furnishing an envelope [583] having a transparent window for observing the address of the letter is concerned.

RXQ. 131. Are those the only differences between Cohn and Busch that appear material to you in the production of an envelope such as here in suit?

A. Yes, at least as to the main differences. There may be minor differences, such as the manner of applying the opaque coloring matter when the envelope is made of one sheet of paper, and the use of two pieces of paper instead of one when the Busch envelope is made in accordance with one form of making the envelopes. However, if an envelope were made of two pieces of paper, and the front was an unpunctured face, I do not believe such fact would be a difference of sufficient importance to take the envelope

(Testimony of Oscar W. Bond.)

made of two pieces out from under the Cohn patent.

RXQ. 132. Can you tell from the Busch drawing whether the envelope purporting to be therein illustrated is made in one piece or two different kinds of paper, as Busch says he may do?

A. Taking Figure 3 as illustrating the manner of making the envelope, I would say that figure illustrates an envelope made of one piece, for the reason that the ends of the paper overlap each other on the back, and do not show any overlapping piece at the top and bottom edges of the envelope. [584]

RXQ. 133. You have previously said that you considered the Brown 1862 patent as the nearest approach to the Cohn first patent, and the Boldt British as the nearest approach to the second Cohn patent. Which patent, Brown, Boldt, Callahan, or Busch, comes nearest to the Cohn patents?

A. There is not much difference as between the first Cohn patent and the Brown 1862 patent, and the Busch 1896 British patent; but as between Brown and Busch, I would select Brown, as he proposes to form the transparent window by the use of proper compound corresponding to the manner in which Cohn proposes to make the transparent window.

If the transparent window is not made in a semi-transparent paper, but would include a window formed of the paper itself, then the Busch would be the nearest to the first Cohn patent.

The Boldt patent is the nearest approach to the Cohn second patent of the various patents named in the question.

(Testimony of Oscar W. Bond.)

RXQ. 134. As to the first Cohn patent, I intended you should take it as it stands, and also take the Brown and Busch patents as they stand, and select one or the other—Busch or Brown—as being in your opinion the nearest thing in the art to Cohn, if you can do so.

A. Inasmuch as the Cohn first patent must stand for its novelty in producing the transparent window on the [585] employment of a compound which will give a transparent effect, the Brown patent is the nearest for this reason.

RXQ. 135. As between Brown, Busch or Boldt, on the one hand, and Callahan on the other, can more or less be said in favor of Cohn over Callahan than you have said in showing the difference between Cohn and the other patents?

A. Limiting the Cohn to a single-piece transparent window envelope, such as described in the Cohn patent, Callahan would not be as pertinent as the other patents named, for the reason that it is a two-piece transparent window envelope. Outside of this difference between Callahan and the envelopes of Cohn, Brown, and Busch, Callahan is in the same category as the patents named.

RXQ. 136. Has the introduction in evidence of the Busch and Callahan patents altered your opinion in any way that the Heinz envelope is most like the first Cohn patent, of all the patents here before the Court? A. No.

(Sgd.) OSCAR W. BOND.

It is hereby stipulated and agreed between the par-

(Testimony of Julius Regenstein.)

ties and the counsel that the defendant shall have to and including Thursday, the 5th day of January, 1911, in which to [586] conclude the putting in of the defense, and that the complainant shall have to and including the 5th day of February, 1911, wherein to take testimony in rebuttal; and that an adjournment now be taken until Monday, January 2d, 1911, ten o'clock A. M., at Suite 1632 Marquette Building, 204 Dearborn Street, Chicago, Illinois, which is done accordingly.

Adjourned until Monday, January 2, 1911, ten o'clock A. M. [587]

Chicago, Illinois, January 2, 1911.

Parties met pursuant to adjournment. Present as before.

By agreement, adjournment is taken until Wednesday, January 4, 1911, 10 o'clock A. M.

Wednesday, January 4, 1911.

Parties met pursuant to adjournment. Present as before.

[Testimony of Julius Regenstein, for Defendant
(Recalled).]

JULIUS REGENSTEIN, a witness recalled on behalf of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. You are the same Julius Regenstein who has already been called and testified as a witness on behalf of the defendant, are you? A. I am.

Q. The claims of this second Cohn patent speak about permanent advertising matter on the border of

(Testimony of Julius Regenstein.)

the envelope. How long have you known the use of envelopes in this country having permanent advertising matter printed on their faces, so positioned as not to interfere with the space for the address of the envelope? ,[588]

Objected to as irrelevant and immaterial.

A. I have seen such envelopes for the last twenty-five years.

Q. 3. In your other deposition you testified as to your operations in making one-piece window envelopes with borders around the windows, in January, 1904. About when did you begin to apply the oily preparation on sheets of paper with several printing plates, to produce several transparent windows at a single operation of the press, as contemplated and described in this Reese 1904 patent?

A. In January, 1904.

Q. 4. How did you apply the oily preparation to several spots or portions of the single sheet, to make several windows at a single operation?

A. The printing was done on a small Meihle press called a pony.

Q. 5. When did you begin to do that?

A. In January, 1904.

Q. 6. From the time you began, in January, 1904, as you have testified, how continuously and diligently did you proceed with the work until the present time? [589]

A. We experimented and manipulated until we were able to print twenty-four at one and the same impression.

(Testimony of Julius Regenstein.)

Q. 7. From January, 1904, when you began until the present time, has there ever been a period when you discontinued or gave up the work of making one-piece transparent window envelopes?

A. We experimented during the early months of 1904, and did not experiment very much during the latter part of 1904, since we intended and did go actually into business early in 1905, and from that time on we experimented in various ways to this present day.

Q. 8. What did the experimenting that you have mentioned relate to?

A. The experimenting I relate to stands for our experiments in printing twenty-four blanks at one and the same time, and to find the proper oil solutions to make the paper transparent.

Q. 9. Was there any necessity of preparing or equipping special machinery or presses to enable you to print twenty-four windows at a single operation?

A. We were obliged to buy presses for this purpose which in a sense were not special, but a great many changes were made to adjust such presses for our purposes. [590]

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 10. In your answer to Q. 2 just asked you, about how long you had known of envelopes with permanent advertising matter on their faces, you did not have reference to transparent window envelopes in which the advertising matter was related to

(Testimony of Julius Regenstein.)

the shape of the window or a border around the transparent window; but you were referring simply to envelopes of the character of "Defendant's Exhibit Moline Envelope" and "Defendant's Goyerr Envelope?"

A. I was referring to the regular style of envelope, and not to transparent envelopes.

JULIUS REGENSTEIN. [591]

[Testimony of Oscar W. Bond, for Defendant (Recalled).]

OSCAR W. BOND, a witness recalled on behalf of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. You are the same Oscar W. Bond who has already testified as a witness on behalf of the defendant, are you? A. I am.

Q. 2. I now show you a printed copy of the Busch 1896 patent, No. 11,876, which was not present at the time you were testifying before, nor at the time it was offered in evidence, but which I have since been able to procure. Is that the same Busch patent as the one about which you testified when on the stand before? A. It is.

Q. 3. If you have present any envelopes which correctly represent the envelope shown and described in this English Busch patent, I will ask you to produce the same.

A. I have three envelopes representing three constructions described in the said Busch patent, and here will produce them.

Q. 4. Please describe these three envelopes in de-

(Testimony of Oscar W. Bond.)

tail, and refer to the description in the Busch patent [592] which describes them.

A. The envelope which I now have before me is an envelope in which the front is left almost entirely transparent, with a border of opaque material adjacent to the edges, and around the transparent portion, and with the back of the envelope made opaque by the use of an opaque material.

This envelope corresponds to the form of envelope set forth in the specification and described in these words:

“In some cases the front of the envelope is made of transparent material, while the back is opaque.”

It is also a representation of the envelope shown in Fig. 1 of the drawings, in which the front of the envelope is nearly all transparent, with a border surrounding the transparent portion of the envelope.

The envelope now before me is one in which a small portion only of the front of the envelope is left transparent, and this transparent portion is surrounded by an opaque portion extending to the edges of the envelope on all sides of the transparent portion.

This envelope is of the form also described in the specification of the Busch patent, as follows:

“Or a portion of the front may be transparent, while the rest of the envelope is opaque.”

The third envelope now before me is a type of envelope described in the specification of the said Busch patent, as follows: [593]

(Testimony of Oscar W. Bond.)

“Or the back and a portion of the front may be transparent.”

The three envelopes are envelopes covered by the claims in the patent, in which Claim 1 calls for

“1. A letter envelope made partly or wholly of transparent material, substantially as and for the purpose described.”

Claim 2 calls for

“2. An envelope in which the front or a part of it is transparent.”

This envelope of Claim 2 is in combination with a letter having the address so arranged that it appears through the envelope, substantially as described.

The three envelopes are each in accordance with a form of envelope described in the specification, and are each within the envelope called for by the two claims of the patent.

All three envelopes are made in accordance with the directions found in the specification, in describing how the contrast or difference may be produced, namely,

“By printing with opaque colouring matter applied to a portion of the envelope.”

Q. 5. How far do you consider that the three envelopes produced by you and discussed above are fair, real and actual embodiments and exemplifications of the envelopes shown and described in this English Busch 1896 patent? [594]

A. All three of the envelopes are fair, real and actual representations of envelopes which would be made by following the directions for making envel-

(Testimony of Oscar W. Bond.)

opes, found in this Busch patent.

Q. 6. I notice in the second and third envelopes produced by you that the transparent portion or window of the envelope is somewhat oval in shape. Do you consider that in any way a departure from the description of the Busch patent?

A. I do not. It is merely a matter of selecting the shape of the transparent portion, and there is nothing in the Busch patent limiting the shape of the transparent portion to any particular form.

Q. 7. How far does the oval-shaped window in these two Busch envelopes correspond to the shape of the transparent windows of the Brown 1862 patent?

A. They are substantially the same as the windows of the transparent portions of the envelopes of the Brown 1862 patent.

Defendant's counsel offers in evidence the three envelopes produced by the witness, and asks that they be marked "Defendant's Exhibit Busch 1896 Patent Envelope Nos. 1, 2, and 3," respectively. [595]

The receipt in evidence of the envelopes last offered is objected to as lacking proper foundation, and as not illustrating the Busch patent.

Q. 8. As I understand, these three envelopes produced by you are made out of paper which had been rendered transparent throughout before the paper had been converted into envelopes; is that your understanding?

A. Yes, that is my understanding.

Q. 9. Please state your understanding as to how the entire paper composing these envelopes had been

(Testimony of Oscar W. Bond.)

rendered transparent.

A. My understanding is that in the manufacture of transparent paper the stock, in its original condition, would be of an opaque nature, and, being so, is treated by the use of some substance or material that would render it transparent.

Q. 10. If you have present an envelope of transparent material throughout, as these three envelopes, which you have produced as representative of the Busch envelope, were before the opaque material was printed on them, in accordance with instructions of the Busch patent, please produce the same. [596]

A. I have such envelope, and here produce it.

Q. 11. I believe you, yourself, bought these envelopes, at my request, to have the Busch envelopes made; is that correct? A. Yes, that is correct.

Defendant's counsel offers in evidence the transparent envelope produced by the witness, to show the envelopes which which the Busch envelopes were made, and asks to have the same marked as "Defendant's Exhibit Busch Envelope Transparent Stock."

Q. 12. What do you understand to be the nature of the material or preparation used to make the transparent stock for the Busch envelope?

Objected to as irrelevant, immaterial, and no proper foundation laid; and, furthermore, Busch says what his envelope stock consists of.

A. Some material having the property of transforming paper of an opaque character into paper of a transparent character. So far as my knowledge goes, paraffine is one of the materials ordinarily used

(Testimony of Oscar W. Bond.)

for making paper transparent, but any material having the requisite oily [597] property could be employed for the purpose, such oily substance or material being of a nature to make the paper, when dry, with a solid surface that would not interfere with its use as an envelope, or for any other purpose, and which would not give a greasy appearance or produce a greasy effect with the use of the envelope.

Q. 13. Is paraffine of an oily substance, if you know?

A. I believe it is of an oily nature, in that it will penetrate the paper when applied thereto, and will creep or run more or less, disfiguring the paper in that way unless it is spread entirely over the sheet of paper, and then calendered or otherwise treated so as to set it permanently as a part of the paper.

Q. 14. If these three Busch Patent Envelopes offered in evidence had only had the portion or window shown in them treated with paraffine or other oily preparation, instead of the entire paper composing them, and then the opaque matter printed on them, as it has been, what difference would there have been in such envelopes and the envelope described and claimed in the first Cohn patent?

Objected to for lack of proper foundation; as irrelevant and immaterial. [598]

A. No difference whatever.

Q. 15. Do I understand from you that the only difference between these Busch envelopes, as they have been offered in evidence, and the envelope described and claimed in the first Cohn patent, is as to

(Testimony of Oscar W. Bond.)

the extent or degree to which the oily preparation has been applied, in preparing the stock for such envelopes, respectively?

Object to as leading, and utterly lacking any foundation in the evidence.

A. That would be the only difference between an envelope made according to Busch and an envelope made according to Cohn. The Busch envelope has the entire stock or paper from which it is made rendered transparent over its entire face or surface, and the section or window for seeing the address is made prominent by printing opaque matter around the transparent section over the entire surface of the envelope outside of the window or transparent section. The Cohn envelope is made by rendering transparent only that portion of the envelope which is to serve as a transparent section or window, leaving the balance of the envelope opaque around the transparent section or window, and this opaque portion is so made by employing a border of opaque material, which, in one form, extends from the transparent section or window over the remaining portion of the face of the envelope, the same as in the Busch envelope. [599]

Q. 16. If we took the envelope of the Brown 1862 patent, and printed an opaque coloring matter over the face of the envelope outside of the window, exactly in accordance with the instructions and directions of the Busch 1896 patent, what patented envelope would result?

A. The envelope of the first Cohn patent would re-

(Testimony of Oscar W. Bond.)

sult from taking the envelope of the Brown patent and printing thereon opaque matter, as instructed by the Busch patent.

Q. 17. When you were asked, on cross-examination in your former deposition, to select that single patent, of the various ones offered in evidence, which you considered to most nearly, in and of itself, approach or disclose the envelope of the first Cohn patent, I believe you selected the Brown 1862 patent. Why did you select that patent instead of the Busch British 1896 patent?

A. For the reason that the Brown envelope is made from an opaque stock, as called for by the claim of the first Cohn patent. This opaque stock in Brown has a portion thereof rendered transparent, which is also a requirement of making an envelope under the claim of the first Cohn patent; and, therefore, it seemed proper for me to select the Brown patent as having the nearest resemblance or being the nearest approach to the envelope of the first Cohn patent, rather than the Busch, in which the stock for the envelope is made entirely transparent instead of being opaque with only a portion [600] transparent.

Q. 18. Please state your opinion, whatever it may be, as to whether or not any invention was or could be involved in taking the envelope of the Brown 1862 patent, and converting it into the envelope described and claimed in the first Cohn patent, in view of the teachings and instructions of the Busch 1896 patent, giving your reasons for any opinions you may express.

Objected to as incompetent, and immaterial.

(Testimony of Oscar W. Bond.)

A. No invention, in my opinion, was required to apply the instructions of the Busch patent as to making the face of the envelope outside of a transparent section opaque, and using such instructions in connection with the envelope of the Brown 1862 patent.

It seems to me that the condition would be like this: A manufacturer of envelopes, knowing of the Brown patent and the benefits derived from using the transparent portion of the Brown envelope to disclose the address of a letter, and seeking to improve the appearance of the transparent portion or window, in looking over what has been done in the making of envelopes came across the Busch patent, and found from the instructions of such Brown patent that it was possible to make the transparent window or section of the Brown envelope more prominent by following the instructions of Busch, and printing around the transparent window or section of the Brown envelope a facing of opaque matter. [601] The manufacturer, in so applying a border or facing of opaque matter around the transparent section or window of the Brown 1862 envelope, by printing the same on the face of the envelope would simply follow out the instructions given by Busch for making an opaque surface or border around the transparent window, and would simply follow such instructions. Instructions given to a party how to do a thing or instructions followed by a party in doing something are not and cannot be the invention of the party who follows the instructions. As a matter of fact, the following of instructions could never be regarded as inventions.

(Testimony of Oscar W. Bond.)

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 19. In your answer to Q. 12 and following, regarding the nature of materials used to make the transparent stock for the Busch envelope, were you not referring to what you believed was the method sometimes employed in making ordinary transparent paper, and not to any particular method for making the transparent paper employed by Busch?

A. Busch simply states that the paper from which his envelopes are made is transparent; and in giving my answer to Q. 12 and following I referred to the ordinary practice of making transparent paper, and not to any particular method employed by Busch, who is silent as to how the transparent paper used for the Busch envelopes was or [602] is to be made.

OSCAR W. BOND.

It is stipulated by the counsel for the parties respectively that if Thomas A. Banning were called as a witness he would testify that he personally dictated and signed the letter to Mr. Regenstein dated December 16, 1903, copied in Q. 45 of Mr. Regenstein's deposition; and the letter to Mr. Sullivan dated October 11, 1910, copied in the statements following Q. 50 of Mr. Bond's deposition; and that such letters were dictated and signed on the day of their dates respectively and duly mailed to Mr. Regenstein and Mr. Sullivan.

It is further stipulated that uncertified copies of the certified copies of the file-wrappers and contents

offered in evidence at the end of Mr. Bond's direct examination, closing with Q. 66, may be attached to the end of the depositions of the defendant's witnesses, and returned to the Court with such depositions as a matter of convenience, although the [603] certified copies are also to be produced and filed at the time of the hearing.

It is further stipulated that the time for the complainant to take his reply or rebutting testimony shall be extended until the first day of March, 1911, and that no testimony shall be taken before February 10, 1911.

It is further stipulated that the notary shall return the testimony by sending the same by express to H. M. Wright, Esq., Examiner in Chancery, Post-office Building, San Francisco, California, with no unreasonable delay.

By Mr. BANNING.—Defendant's counsel now states that the defense here rests. [604]

State of Illinois,
County of Cook,—ss.

I hereby certify that the foregoing depositions were taken in pursuance of the notice hereto attached, at the place stated in the caption thereof, and upon the day set forth in said caption and the succeeding days recited from time to time to which adjournments were taken, in my presence and in the presence of counsel for the respective parties to the cause in said caption entitled; that previous to giving their testimony the said witnesses were by me duly sworn to tell the truth, the whole truth, and nothing but the truth in said cause; that said depositions were

taken down by me on a typewriting machine as the questions were asked and the answers given, and read over to the witnesses as the taking of the depositions proceeded; and that I am not attorney or counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof I have hereunto set my hand and notarial seal this 5th day of January, 1911.

[Seal]

FRANCES M. FROST,
Notary Public.

Chicago, January 10, 1911.

Received of Banning, on behalf of the defendant, \$153.80 notary's fees for taking the foregoing depositions.

FRANCES M. FROST,
Notary Public. [605]

[Complainant's Exhibit "H."]

Serial No. 231,886. Paper No. 1½.
Application.

Filed Nov. 8—1904.

\$15.—RECEIVED

Nov. 8, 1904. Y.

CHIEF CLERK U. S. PATENT OFFICE.
PETITION.

To the Commissioner of Patents:

Your petitioner Max M. Cohn citizen of the United States and resident of the city and in the County of San Francisco and State of California whose post-office address is 416 Sansome St San Francisco California prays that letters patent may be granted to him for the improvement in Envelope set forth in

the annexed specification; and he hereby appoints GEO. H. STRONG, of San Francisco, Cal., whose register number is 1537, and T. W. FOWLER, of Washington, D. C., whose register number is 144, his Attorney, with full power of substitution and revocation to prosecute this application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith.

Signed at San Francisco in the County of San Francisco and State of California this 27th day of October, 1904.

MAX M. COHN.

Note: Please direct all correspondence to T. W. Fowler, Washington, D. C.

SPECIFICATION.

To All Whom it May Concern:

Be it known, that I Max M. Cohn a citizen of United States residing at the City and ~~in the~~ County of San Francisco and State of California have invented new and useful improvements in Envelops of which the following is a specification. [606]

My invention relates to an improved envelop of the type having a generally opaque surface with a more or less limited transparent area for the addressee's name and address to show through.

The object of my invention is to provide an unpunctured envelop of this character which shall be simple and cheap to manufacture, practical in every way and which shall offer novel and unique possibilities for advertising.

The invention consists of the parts and the con-

struction and combination of parts as hereinafter more fully described and claimed, having reference to the accompanying drawings, in which—

Sub A
Jan. 6-'05

Figs. 1 and 2 show envelopes having transparencies of various shapes.

Figs. 3 and 4 are modifications showing transparencies in the form of a design of trade mark.

In carrying out my invention I take a blank sheet of paper or an envelop blank of suitable strength and texture which is, say, semi-transparent, and apply to a portion of one side of the blank, generally on the inside, a preparation which has the property of rendering transparent the portion to which it is applied. The remaining portion, or a part of the remaining portion of the blank which forms the face

of the finished envelop is then imprinted with a suitable opaque coloring matter

such as paraffine oil
I employ a or and resin or a grease
I have compounded a preparation which
produces the desired result of rendering a semi-transparent paper transparent. This preparation is stamped or printed on or otherwise applied to the or window blank to provide the transparency of the desired design and it is applied to such part of the blank where the transparency [607] is desired to appear on the face of the envelop and it may cover a larger or lesser space according to the desired size of the transparency or window.

Since the oily preparation has a tendency

to creep or "bleed" beyond the borders of the space imprinted by the stamp or die by which it is applied and so possibly stain or discolor the rest of or give a ragged appearance

to the window opening,
the envelop, it is preferred even where the paper

^A might ordinarily be deemed sufficiently opaque, to apply some sort of coloring matter at least around the immediate borders of the transparency. This coloring matter may be applied solid over the face of around the window as in Fig. 2

the envelop or it may take the form of graduated

^A tints or of being shaded, or the representation of a

surrounding cloud effect, as indicated^{at 3} in Fig. 1.

Insert B

B

Usually and perhaps preferably the preparation and coloring matter are applied on opposite sides of the blank; the preparation on the inside and the coloring on the outside.

Developing out of this idea of making an unpunctured envelop with a window or transparency for the addressee's name to appear through, is the idea of changing the form or outline of this transparency to correspond with the trade mark, design, or advertised object of a merchant, manufacturer, advertiser, or other person, company or firm.

Jan. 6-'05.

In Figs. 1-2 are shown envelopes ~~a having~~
~~transparencies 2 of various shapes, and vari-~~
~~ously colored and bordered.~~

In Figs. 3-4 are shown possible modifications of this idea adapted to advertising purposes in which

the transparency is made to assume the shape of some advertised article, trade mark or the like together with certain letters or words as 4 standing out uncolored and non-transparent in the generally opaque surrounding border. [608]

Fig. 3 shows a transparency in the shape of a cucumber, the trademark of a well known manufacturer of a great many varieties of goods. Fig. 4 shows a cigar in transparency and the words "Blanco-Cigar" in non-transparency on colored opaque field.

The number of shapes this transparency may take almost limitless

Jan. 5-'05. is ~~immense~~: different people might use an envelope with a window in the shape of an oyster, a fish, a cake of soap and other toilet articles, a cascade, a dress-shield, a biscuit, an article of hardware and other articles of manufacture, and so on indefinitely, having due regard for the necessary size of the transparency so as not in any way to interfere with the clear showing up of the addressee's name inside. The essential feature in this connection is a window which in general outline is characteristic of a symbol of trade. By symbol of trade is meant any design such as mentioned above or trade mark characteristic of certain goods or the product of a certain manufactory.

Insert C

C

Jan. 6-1905. I thus produce a most unique and at the same time inexpensive and effective advertising medium. Every one needs envelopes. These advertising envelopes can be made at small expense. They can be made of any shape or size and made to fit

the stationary rather than the stationary made to fit the envelop. They can be used not only for mailing but for sending out circulars and the like by messenger. The characteristically shaped window and associated the uncolored letters and colored background advertisement constitute a most striking advertisement to attract public attention, the object of all advertising. [609]

Having thus described my invention, what I claim and desire to secure by Letters Patent is—

Sub D.
Jan. 5-
1905

1st. As a new article of manufacture an envelop made of semi-transparent stock and rendered by suitable means locally transparent to produce a window through which an addressee's name within the envelope is viewable.

2nd.- An unpunctured envelop of non-transparent stock, to a portion of which a preparation has been applied to render such portion transparent and a colored or tinted border surrounding said transparent portion.

3rd.- An envelop having an unpunctured face of relatively opaque stock, the face of said envelop having a limited area treated to render said area transparent, the side of the face opposite to that which has been so treated being colored or colored to form a border around said transparent portion.

4th. An unpunctured envelop of non-transparent stock to a portion of which a preparation has been applied to render such portion transparent and a colored or tinted border said surrounding said transparent portion, said transparent portion being in general outline characteristic of a symbol of trade.

[610]

5th.- An advertising device comprising an envelop having a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of trade.

6th.- An advertising device comprising an envelop having a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding said window and advertising matter forming no part of the address, appearing on said tinted border.

7th.- As an advertising device, an unpunctured envelop having a generally opaque face except for a transparent window portion through which an addressee's name on an enclosure may show through, said window being in general outline characteristic of a symbol of trade.

8th.- As an advertising device, an envelop having a transparent window portion in its face and a surrounding colored or tinted background, said window portion being in general outline characteristic of a symbol of trade.

9th.- As an advertising device, an envelop having a transparent window portion in its face, and a surrounding colored or tinted background, said window portion being in general outline characteristic of a symbol of trade and printed matter unassociated with the address upon said colored background.

[611]

In Testimony Whereof I have hereunto set my hand in presence of two subscribing witnesses.

MAX M. COHN.

J. M. ELLIS.

S. THOM.

OATH.

State of California,

City and County of San Francisco,—ss.

Max M. Cohn the above-named petitioner, being sworn (or affirmed), deposes and says that he is a citizen of United States, and resident of the city and ~~in the~~ county of San Francisco and State of California that he verily believes himself to be the original, first, and sole inventor of the improvements in Envelops described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or patented in any country foreign to the United States on an application filed more than twelve months before this application, or in public use or on sale in the United States for more than two years prior to this application; and that no application for patent on said improvements has been filed by him or his representatives or assigns in any country foreign to the United States.

MAX M. COHN.

Sworn to and subscribed before me this 27th day of October, 1904.

[Notarial Seal]

JAMES M. ELLIS,

Notary Public in and for the City and County of
San Francisco, State of California. [612]

2-260

FEF.

Paper No. 1.

All communications respecting should give the serial number, date of filing and title of invention.

Division 32.

Room 148.

Address only: The Commissioner of Patents, Washington, D. C.

Department of Interior,

United States Patent Office,

Washington, D. C., December 22, 1904.

MAILED

“ “ “ “

Serial No. 231,886, Paper No. 1.

M. M. Cohn,

Rejection.

C/o T. W. Fowler,

DIV. 32.

Washington, D. C.

Please find below a communication from the EXAMINER in charge of your application.

No. 231,868, filed Nov. 8, 1904, “Envelopes.”

F. I. ALLEN,

Commissioner of Patents.

Claims 1, 2, and 3 are rejected as being substantially anticipated in British patent to Busch, 11,876, July 4, 1896 (229-71) in view of the immemorially old practice of country boys in making paper lanterns of greasing the whole or a part of the paper to render the lantern more translucent. The coloring of the “border” may be regarded as of no patentable significance in the claims in view of either of the British patents to Whitty, 2899, Oct. 6, 1869 (Same

class), and Golby, 1985, Jan. 31, 1900 (Same Class).

Claims 4 to 9, both inclusive, are rejected upon patent to Hatfield, 202,816, Apr. 23, 1878 (Same class) when taken with Busch, *supra*. The Hatfield reference shows that it is old to vary the form of the display opening almost without limit, and even aside from this the mere shape of the opening is not seen to be of any mechanical significance. Such shape appears to go to design or ornament only.

Applicant is required to insert in the specification herein the composition of his "preparation."

R. C. F.

JAY F. BANCROFT, Examiner.

[613]

SPECIMEN ENVELOPE CANNOT BE FURNISHED.

[614]

Serial No. 231,886. Paper No. 2.

Amendment. A-B-C-D.

Filed Jan. 6-1905.

U. S. PATENT OFFICE.

JAN 6, 1904.

DIVISION XXXII.

In the matter of the application of

Max M. Cohn,

Envelopes.

Filed November 8, 1904.

No. 231,886.

Commissioner of Patents,

Sir:- The above entitled application is hereby amended
as follows:

Page 1, lines 13-16, cancel the description of the figures and
substitute Fig. 1 shows an envelope embodying my invention in
 which I employ a tinted or colored border around the window open-
 ing to cover up signs of "creeping" or "bleeding" of the pre-
 preparation into the surrounding body of the paper. Fig. 2 repre-
 sents an envelope with a different shaped opening from that of
 Fig. 1 and in which the entire face of the envelope around the
 window is assumed to have been imprinted or colored to give de-
 finition to the window opening and obliterate signs of "creep"
 in the transparency-producing preparation. Figs. 3 and 4 show
 modifications of the invention applied to advertising purposes"

- ✓ Page 1, line 24, after "envelope" insert "A"
- ✓ Page 1, line 26, erase "Have compounded a" and insert "employ a
compound or" and same line, after "preparation" and insert "such
as paraffine oil and resin or a grease"
- ✓ Page 1, line 29, after "transparency" insert "or window"
- ✓ Page 2, line 4, before "preparation" insert "oily"
- ✓ Page 2, line 7, after "envelop" insert "or give a ragged appear-
ance to the window opening"
- ✓ Page 2, line 11, after "envelop" insert "around the window as in
- ✓ Fig. 2" Page 2, line 15, after "indicated" insert "at 5" Page 2,
line 13, insert: "In any event the effect and object of the colored
border is to give definition to the window opening and obliterate
or cover up the otherwise rough unfinished outline

of the window resulting from the encroachments of the oil or grease or other substance beyond its desired limits."

Page 2, erase lines 23-24.

Page 2, line 28, after "words" insert "as 4"

Page 3, lines 6-7, change "immense" to "almost limitless"

Page 3, after line 18, insert "Where the window opening is formed by the application of a grease or equivalent compound to the envelop blank the colored or shaded border is essential to the production of a window of properly defined outline"

Page 3, line 26, change "uncolored-lettered" to "associated letters"

Erase the original claims and insert:

1. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelop face having a transparent window and a contrasting border around said window to give definition to the window opening.

-2- As a new article of manufacture, an envelope with an unpunctured face of relatively opaque stock, said envelope face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.

Remarks:

In view of the amendments now made renewed consideration and favorable action is asked. The claims, as now presented, are drawn to the envelop having the transparent window and also a contrasting border around the window to conceal the effect of the tendency of the preparation used for transparent purposes to creep into the surrounding opaque stock. [616]

D
Cancelled
Aug. 6-
06

This clearly distinguishes our claims from the art cited and relates wholly to an envelop construction. To make this part of the invention fully understood and appreciated, we annex hereto a sample of our envelop as claimed. If desired, Fig. 3 will be amended to show a border surrounding the emblem. At present in Figs. 2 and 4 it is assumed that the entire face of the envelop is colored around the window opening; while in Figs. 1 and 3 there is only a border corresponding to the sample enclosed.

Respectfully,
MAX M. COHN,
By T. W. FOWLER,
His Attorney. [617]

2-260.
FEF.

Div. 32, Room 38.

Address Only the Commissioner of Patents, Washington, D. C.

Paper No. 3.

All communications respecting this application should give serial number date and filing of invention.

Department of the Interior.
United States Patent Office,
Washington, D. C., February 13, 1905.

MAILED

“ “ “

Serial No. 231,886. Paper No. 3.

Rejection.

Div. 32.

M. M. Cohn,
c/o T. W. Fowler,
Washington, D. C.

Please find below a communication from the EX-AMINER in charge of your application.

No. 231,886, filed Nov. 8, 1904, "Envelopes."

F. I. ALLEN,

Commissioner of Patents.

The claims presented by amendment of Jan. 6, 1905, is rejected upon the state of the art of record. It is a matter of common knowledge to make envelopes of transparent material. It is a matter of common knowledge to make envelopes having a transparent portion and an opaque portion. It is a matter of common knowledge to render paper or envelopes transparent by treating such paper or envelopes with paraffine or grease. Applicant's so-called border does not differ except in design from the balance of the opaque portion of his envelope. There is believed to be nothing whatever patentable in this application.

JAY F. BANCROFT,

Examiner. [618]

Serial No. 231,886. Paper No. 4.

Letter

Filed Feb. 20-1905.

U. S. PATENT OFFICE,

FEB. 20, 1905.

DIVISION XXXII.

Room 148.

In the matter of the application of

Max M. Cohn,

Envelopes.

Filed November 8, 1904.

No. 231,886.

Commissioner of Patents,

Sir: We greatly fear that the examiner has not yet arrived at the full understanding of this invention. We admit that it is a matter of common knowledge to make envelopes of transparent material. We also admit that it is a matter of common knowledge, broadly, to make an envelope a generally opaque body having a transparent window or opening. It is also not new to render paper transparent by treating it with grease and which proposition is included in the one second above noted. We therefore agree with the examiner's holding as to such matters, but beyond this we do not go. These points, however, do not include the essential part of this invention and there is nothing in the record as made out by the examiner which anticipates this remaining, essential and, we submit, absolutely new feature of our envelope. When the grease is applied to a piece of paper say to an envelope to form a window or transparent opening, the grease spreads in irregular lines

into the body of the body outside of reserved window or transparent portion and obliterates all well defined definition of the opening. The examiner will find this to be true in the samples we have on file. To cure the known objection stated and to cover up the signs of "creeping" or "bleeding" of the grease or preparation into the surrounding body of the paper and to thereby give definition to the window opening and present smooth finished edges as distinguished from ragged edges due to "creeping" or "bleeding" we avail ourselves of a [619] novel tinted or colored border around the window opening and which border is applied over the irregular lines left by the spreading of the grease or the encroachments of the oil or grease beyond the desired limits. This border is generally sharply distinguished from the colored or opaque body of the envelope and it gives finish and added attractiveness to the envelope as a whole. This border is new, and the examiner has shown no reference to it; it is useful, because it gives definition to the window and covers up the ragged and undesirable lines which exist because of the grease used in making the window area transparent and being both new and useful it is necessarily patentable, as an advance in the art.

In view of the foregoing we submit, that no art is cited for an article of manufacture having the combined characteristics noted in our claims; and the article being an entity we do not think its component parts should be dissected and then the whole rejected because the said parts are, some of them, old.

Reconsideration is asked and a specific application of the art to the border and its modifying effects upon the irregular lines left after rendering the window space transparent.

Respectfully,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [620]

2-260.

FEF.

DIV. 32, Room 148.

Address only The Commissioner of Patents Washington, D. C.

Paper No. 5.

All communications respecting this application should give serial number date of filing and title of invention.

Department of the Interior,

United States Patent Office,

Washington, D. C., March 28, 1905.

MAILED

“ “ “

Serial No. 231,886 Paper No. 5.

Rejection.

Div. 32.

M. M. Cohn,

c/o T. W. Fowler,

Washington, D. C.

Please find below a communication from the EXAMINER in charge of your application.

No. 231,886, filed nov. 8, 1904, "Envelopes."

F. I. ALLEN,

Commissioner of Patents.

The application above entitled has been further considered in connection with applicant's argument of Feb. 20, 1905.

Notwithstanding the applicant's argument the claim is still deemed to be unpatentable over the references of record and for the reasons stated. The claims are therefore each a second time and finally rejected.

JAY F. BANCROFT,
Examiner. [621]

Serial No. 231,886.

Paper No. 6.

APPEAL.

Name, Cohn, M. M.

Filed Nov. 8, 1906.

Title, Envelopes.

TO EXAMINERS-IN-CHIEF.

Reasons for appeal, February 28-1906.

Examiner's statement, March 22-1906.

Notice of hearing, May 28-1906, 1.30 P. M.

Brief, April 5-1906.

Decision of Examiner affirmed, April 18-1906.

Notice of decision, April 18-1906.

TO COMMISSIONER.

Received July 6-1906.

Brief,

Notice of hearing, July 11-1906.

Decision, of Examiner-in-Chief affirmed as to claim

1 and reversed as to claim 2, August 1-1906.

Notice of decision, August 1-1906. [622]

Department of the Interior,
United States Patent Office,

Washington, D. C., March 6, 1906.

MAILED

“ “ “

Serial No. 231,886. Paper No. 7.

Rejection.

Div. 32.

M. M. Cohn,

c/o T. W. Fowler,

Washington, D. C.

Please find below a communication from the Examiner in charge of your application,

No. 231,886, Filed Nov. 8, 1904, "Envelopes."

F. I. ALLEN,

Commissioner of Patents.

Consideration of the application above entitled with a view of forwarding the appeal filed discloses the fact that applicant has not been advised as to the complete state of the art. In addition to the rejection previously given, the claims are each rejected upon the British patent to:

Cohn, 14,478, June 27, 1904.

Attention is called to patent to:

Brown, 36,393, Sept. 9, 1862 (Envelopes, Display).

In view of these additional references, which should have been cited earlier in the prosecution of the case, applicant is at liberty to withdraw his appeal, or such appeal will be promptly forwarded upon applicant's request.

JAY F. BANCROFT,

Examiner. [623]

Serial No. 231,886, Paper No. 6.

Letter

Filed Mar. 13-1906.

U. S. PATENT OFFICE,

MAR. 13, 1906.

DIVISION XXXII.

Room 148.

In the Matter of the Application of

Max M. Cohn,

Envelopes.

Filed November 8, 1904.

No. 231,886.

Washington, D. C., March 13, 1906.

Commissioner of Patents,

Sir: The Examiner's action in refusing to recognize his own final rejection now nearly one year old and his citation of a further reference, after appeal, is very annoying to applicant, especially when the new reference has no bearing upon the appealed claims as a bare inspection of said claims and reference shows. The Cohn patent is a British patent to this same applicant. It is not for the same invention as called for in this former foreign patent in his oath forming part of this application. The present invention and claims depend for novelty upon "a contrasting border around said window to give definition to the window opening" (claim 1); "and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock" (claim 2).

The British patent to applicant does not disclose

this feature, and the only effect of citing such a patent is to delay the appeal which has been filed in good faith, and to include in the file contents a reference to a patent which is not in point.

The Brown patent is not cited in rejection but is only called to our attention. We therefore do not treat it as a [624] reference; and, apparently, the examiner himself does not so consider it.

Applicant declines to withdraw his appeal and insists that the same shall be answered within the time required by the rule.

Attention is also called to Rule 64 concerning the citation of references.

Respectfully,

MAX M. COHN,
By T. W. FOWLER,
His Attorney. [625]

Serial No. 231,886. Paper No. 9.
Amendment. E.

Filed Aug. 6-1906.

U. S. PATENT OFFICE.

AUG. 6, 1906.

DIVISION XXXII.

Room 148.

In the matter of the application of
Max M. Cohn,
Envelopes.

Filed Nov. 8, 1904.

No. 231,886.

Washington, D. C., Aug. 6, 1906.

Commissioner of Patents,

Sir: The above entitled application is hereby

amended as follows:

Cancel Claim 1.

Respectfully,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [626]

Here follows formal printed letter of allowance and printed copy of specification and drawings of the patent as issued. [627]

Serial No. 27,349. Paper No. 2.

Examiner's Statement.

U. S. PATENT OFFICE,

MAR. 22, 1906.

MAILED.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,

Washington, D. C., March 22, 1906.

Before the Honorable The Examiners-in-Chief.

In re application Max M. Cohn,

Serial No. 231,886.

Filed Nov. 8, 1904.

Envelops.

Attorney—T. W. Fowler, Washington, D. C.

EXAMINER'S STATEMENT.

The Claims appealed are as follows:

1. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelope face having a transparent window and a contrasting border around said window to give definition to the window opening.

2. As a new article of manufacture, an envelope with an unpunctured face of relatively opaque stock, said envelope face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.

These claims stand rejected on the British patent to Cohn and Shipp, 14,478, June 27, 1904, in connection with patent to Brown, 36,393, Sept. 9, 1862, and such claims also stand rejected upon the state of the art shown in British patent to Busch, 11,876, June 1, 1896.

This applicant first treats the semi-transparent material of the envelope with a preparation which has the property of rendering transparent the portion of the material to which it is applied. The remaining portion or part of the remaining portion [628] of the envelope blank is then "imprinted with a suitable opaque coloring matter." This imprinting forms around the transparent space what applicant terms a "contrasting border" in claim 1, and a colored or tinted border in claim 2. In claim 2 he further sets forth that the colored border surrounding the transparent portion is for the purpose of concealing the preparation applied to render the paper transparent if any of the preparation may have soaked into the paper beyond the limits intended for the transparent portion or so-called window.

It is to be noted that claim 1 is not limited to having the transparent window produced by the application of a preparation such as a paraffine oil or the like as set up in the description. Claim 1 is therefore fully anticipated in the British patent to Cohn and Shipp, above cited. For instance, Figure 4 of the British patent shows an envelope with an unpunctured space of relatively opaque stock, said envelope having a transparent window (2) and a contrasting border around the said window of colored ink or pigment.

It is noted that the British patent to Cohn and Shipp does not set forth how the transparent portion of the envelope is formed. The patent to Brown states that the transparent portion or window in his envelope may be made by the same means or substance as is employed for making tracing paper, &c. To print a surrounding border with colored ink or pigment around the transparent portion of Brown's envelope in the same way that Cohn and Shipp print a border around their transparent portion would not involve invention.

Attention is called to the fact that the application oath of this applicant states that he has no foreign patents; applicant's attorney contends in argument that the British patent to [629] Cohn and Shipp is Cohn's invention, but that it is not the same invention as that covered by the claims now appealed.

It would therefore appear that until Cohn establishes by proper oath the fact that the British patent referred to is his, it must be held to be a valid reference for the claims.

The British patent to Busch above cited discloses an envelope having a transparent window comprising a portion of the front of the envelope surrounded by an opaque border, such border being formed by "printing with opaque coloring matter." Thus it is clear that this patent anticipates every letter of claim 1. Busch does not set forth that he forms his transparent portion by the application of paraffine or the like. Such procedure is clearly set forth by Brown, however. To print a colored border with opaque coloring matter around the transparent portion of Brown's envelope would not constitute a new invention.

It is noted that the sample envelope filed with amendment of January 6, 1905, shows the opaque portion of the envelope lying immediately next the transparent portion of a darker color or more heavily printed than the remaining portion of the opaque border. This contrasting difference in the opaque portion of the envelope is not involved in the claims nor is it set up in the description, but has been referred to by the attorney in his argument. This, however, is a mere matter of a judicious use of printer's ink and a matter of design.

It is respectfully submitted that the claims are not patentable.

JAY F. BANCROFT,

Examiner.

Div. 32. [630]

Appeal No. 27,349. Paper No. 5.

BRIEF.

In the United States Patent Office.

Before the Examiners-in Chief.

On Appeal.

EXAMINERS-IN-CHIEF.

Apr. 5-1906.

U. S. PATENT OFFICE.

In re application Max M. Cohn,

Envelope.

Filed November 8, 1904.

No. 231,886.

The invention involved in this appeal is an envelope which has become very popular of late and is now extensively manufactured. Prior to this invention it was not new to construct an envelope with a window or transparent portion adapted to disclose an address on an enclosed sheet, therefore the present invention is but an improvement and advance in the art to which it relates, which improvement is clearly and sharply defined in the following appealed claims:

1. As a new article of manufacture, an envelope with an unpunctured face of relatively opaque stock, said envelope face having a transparent window and a contrasting border around said window to give definition to the window opening.

2. As a new article of manufacture, an envelope with an unpunctured face of relatively opaque stock, said envelope face having a portion to which a preparation has been applied to

render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.

An analysis of these claims will show, (claim 1) that the envelope claimed must have (1) an unpunctured face of (2) relatively [631] opaque stock, having (3) a transparent window and (4) a CONTRASTING BORDER AROUND SAID WINDOW TO GIVE DEFINITION TO THE WINDOW OPENING; and (claim 2) SAID (opaque) ENVELOPE FACE HAVING A PORTION TO WHICH A PREPARATION HAS BEEN APPLIED TO RENDER SUCH PORTION TRANSPARENT, AND A COLORED OR TINTED BORDER SURROUNDING SAID TRANSPARENT PORTION FOR THE PURPOSE OF OBLITERATING OR CONCEALING THE EFFECTS OF THE TENDENCY OF THE SAID PREPARATION TO CREEP INTO THE SURROUNDING OPAQUE STOCK.

The novelty of this invention is in providing a colored or tinted border surrounding a window portion which has been made transparent by some preparation which, because of its oily character, will creep into the surrounding opaque stock and give a ragged and unsightly outline to the transparent window, and I submit that neither of the references cited has any bearing upon such a feature or offers any suggestion of the same.

Two types of envelopes having transparent windows are well known to the art. In one, the envelope blank is punctured to form a window opening, and from a separate sheet of transparent paper there is cut a blank of the shape of said window opening which blank is subsequently pasted to the inner face of the envelope over the opening. Such a construction is open to several serious objections, such as the extra cost in "puncturing" the face of the envelope; the cutting of the transparent blank, and the pasting of said blank to the inner face of the envelope; but more especially is there the objection of imperfect pasting and the consequent presence of raw edges to be caught and torn by cancelling machines or in the other handling of the mail.

There is also the liability of the paste becoming soft and "sticky" in the presence of moisture and the possibility of the inner or enclosed sheet adhering to the pasted envelope. [632]

Another form of envelope having the window opening is made of unpunctured substantially transparent stock, and the body of the envelope outside the window being rendered opaque by printing with opaque coloring matter.

A third type uses an opaque stock with an unpunctured window portion, which is rendered transparent by the use of a preparation of oily matter. To this third class of envelopes my invention is directly related and which makes desirable the surrounding contrasting border to conceal the effects of the tendency of the oily matter to creep into the surrounding opaque stock, and thereby give definition to the window opening.

The examiner is very unfortunate in his citation of references, for the patents cited are certainly not in point for my invention or claim.

The British patent to Cohn & Shipp, 14,478, June 27, 1904, is applicant's own invention; it is identical with applicant's other pending case filed May 9, 1904, serial number 207,082. It does not disclose, or even remotely suggest, the present invention, for which reason *application* has not mentioned his British patent in the oath to the present case; no oath reciting the said British patent is necessary, because the inventions are NOT the same, and reference to foreign patents to the same applicant is only required when the invention covered thereby IS THE SAME as the invention disclosed in the United States application.

The British patent to applicant does not use and does not describe a border surrounding a window which has been made transparent by a preparation which will "creep" into the opaque stock. The British patent described an envelope made of substantially transparent stock, the back of the face of which is rendered opaque by some coloring matter, leaving the window uncolored. [633]

As there is used no preparation which will "creep" into the opaque stock, there is no use for the surrounding border to conceal such creeping, and give definition to the window opening.

I respectfully submit that the patent is not in point for this invention or the claims appealed.

The patent to Brown, 36,393 is only cited to show a window which is made transparent by some sub-

stance such as is employed for making tracing papers. This we admit is old in an envelope, but it is this very method of making the transparent window which calls into play the border of contrasting color which is applied over and conceals the ragged lines left by the reason of the oily matter creeping into the opaque stock of the envelope.

Although we disclose new and useful advantages for this border and we have made the Brown type of envelope a commercial success, so much so that the improved envelope is now being extensively made and sold, the examiner, failing to find a satisfactory reference, takes the position that.

“To print a surrounding border with colored ink or pigment around the transparent portion of Brown’s envelope in THE SAME WAY THAT COHN & SHIPP PRINT A BORDER AROUND THEIR TRANSPARENT PORTION WOULD NOT INVOLVE INVENTION.”

The reference to “the way” that Cohn & Shipp print a border around their transparent portion, is misleading. We deny that the Cohn & Shipp patent has ANY border or requires any from the very nature of the material from which the envelope is made.

What the examiner evidently means by “border” is the print-*printing* on the inner side of the envelope to render the whole envelope outside the window opaque; but my “contrasting border” is claimed as an addition to a “relatively opaque stock,” therefore no merit attaches to the misleading statement referring to applicant’s British patent. [634]

The remaining reference, British patent to Busch, 11,876, of 1896, has a portion of the whole of the envelope transparent. The front is transparent while the back is opaque, or a portion only of the front may be transparent. The patentee says,—

“The desired contrast or difference may be produced either by choosing TWO DIFFERENT KINDS of paper, or by printing with opaque coloring matter applied to a portion of the envelope.”

The “two different kinds” of paper means pasting one part to the other; and the printing with coloring matter must refer to printing on normally transparent paper.

In any event there is present no border co-operating with the window to give the new and useful results we describe.

The examiner does not affirmatively state that the art cited discloses our border; and he implies in the concluding part of his statement that this contrasting border “is not involved in the claims nor is it set up in the description.” In this he is clearly wrong for the description is complete of this feature and its purposes, and both claims appealed make this border the essential and prominent feature.

In view of the foregoing it is respectfully submitted that the examiner’s action is erroneous and it should be reversed.

Respectfully submitted,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [635]

Recorded Vol. 78, p. 380.

Appeal No. 27/349. Paper No. 6.
Decision.

Appeal No. 27,349.

U. S. Patent Office, April 18, 1906.

Before the Examiners-in-Chief, on Appeal.

Application of Max M. Cohn for a patent for an improvement in Envelopes, filed November 8, 1904. Serial No. 231,886. Messrs. T. W. Fowler and Geo. H. Strong for appellant.

This is an appeal from the rejection of the following claims:

“1. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelop face having a transparent window and a contrasting border around said window to give definition to the window opening.

2. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelop face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.”

The references are:

Brown, Sep. 9, 1862, No. 36,383.

British to Cohn et al., No. 14,478, June 27, 1904.

“ “ Busch, No. 11,876, June 1, 1896.

The alleged invention relates to the class of envel-

opes in which the address is not written on the envelop itself but on a paper inside of the envelope and is read through the transparent surface thereof. The appellant starts with an opaque material and by treating a portion thereof makes a transparent window therein at the point where the address is to appear. It is said that the preparation used in treating the material to make the transparent window cannot be applied in such way as to make a clear cut and regular outline for the window but will [636] creep and make an irregular and rough outline. To hide this rough outline and leave a transparent window of symmetrical and regular shape the appellant applies a colored border to the surface around the window. The supposed invention here resides in placing this border around the window.

The patent to Brown says:

“The improvement is to make the envelope or wrapper transparent sufficiently to clearly show the cards of address through its face. There may be only a transparent portion B large enough to exhibit the ‘direction’ through it; and this may be made either by rendering a portion of the envelope or wrapper itself transparent by the same means or substances as employed for making tracing paper or any other in the process of manufacturing the paper, or the envelope, leaving the remainder of the envelope opaque. Or a piece of the envelope of the proper size and shape, may be cut out of the envelope; and the aperture thus made covered with transparent paper or other equivalent transparent covering.”

It is obvious that by following the directions first stated an envelope of the same construction as the appellant's is produced. The appellant has merely added a colored border for the purpose of ornamentation.

In the patent to Cohn et al. is described an unpunctured envelope having a transparent window surrounded by a portion to which dark colored ink has been applied. This is also true of Busch. The border in this case seems to extend to the edge of the envelope but it is nevertheless a contrasting border. Its purpose is, like that in the appellant's case, to have a transparent window regular in outline and of the shape desired. If the transparent material extends to the edge of the envelope it is necessary to extend the ink covered surface to the edge whereas if the transparent portion does not extend so far it is not necessary to extend the ink so far. It may then be applied in the shape of a border sufficiently wide to cover the edges of the transparent portion. The purpose, function and idea of [637] means seems to be the same in both cases. The rough edges of the transparent portion would be concealed just as well by coating all of the balance of the envelope with dark colored ink and the only purpose of substituting a narrower border seems to be to get a different artistic effect. There is no mechanical advantage or utility in it. It is a mere matter of design.

The claims are lacking in patentable novelty in view of the references cited and therefore the decision

of the primary examiner is affirmed.

JOHN M. COIT,

J. H. BRICKENSTEIN,

T. G. STEWARD,

Examiners in Chief. [638]

Serial No. 241,459. Paper No. 1/2

Application.

Filed Jan. 17-1905.

\$15 RECEIVED

JAN. 17-1905.

CHIEF CLERK, U. S. PATENT OFFICE.

Petition.

To the Commissioner of Patents:

Your petitioner Max M. Cohn citizen of the united states and resident of the City and in the County of San Francisco and State of California whose post office address is 416 Sansome St San Francisco California prays that letters patent may be granted to him for the improvement in Envelops set forth in the annexed specification; and he hereby appoints GEO. H. STRONG, of San Francisco, Cal., whose register number is 1537, and T. W. FOWLER, of Washington, D. C., whose register number is 144, his Attorney, with full power of substitution and revocation to prosecute his application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith.

Signed at the City and County of San Francisco in the County of and State of California this Third day of January, 1905.

MAX M. COHN.

Note: Please direct all correspondence to T. W. Fowler, Washington, D. C.

Specification.

To All Whom it May Concern:

Be it known, that I Max M. Cohn a citizen of the United States residing in the city and ~~in the~~ County of San Francisco and State of California, have invented new and useful improvements in Envelops of which the following is a specification, being a division of my original application, "Envelop" filed Nov 8th 1904, Serial No. 231,886, entitled— [639]

My invention relates to an envelop having a transparent space or window in its face through which the name and address on an enclosure may show through.

of

The objection ~~tion to~~ this invention is to so design the window opening and to associate with said window such descriptive matter, as will offer novel and unique possibilities for advertising.

The invention consists of the parts and the construction and combination of parts as hereinafter more fully described and claimed, having ^{reference} ~~reference~~ to the accompanying drawings, in which—^Λ

Fig. 1 shows an envelop, to a portion of which a preparation has been applied to render said portion transparent, and about which transparency is a colored border to cover up the effects of the bleeding.

1 2

Figs. 2 and 3 show my intention in its application to specific brands of goods.

In carrying out my invention I take a blank sheet

Emailed
May 2 '06.

May 8 '06

of paper or an envelop blank of suitable strength and texture which is, say, semi-transparent, and apply to a portion of one side of the blank, generally on the inside, a preparation which has the property of rendering transparent the portion to which it is applied. The remaining portion, or a part of the remaining portion, of the blank which forms the face of the finished envelop A is then imprinted with a suitable opaque coloring matter.

I employ a compound or preparation, such as paraffine oil and resin, or a grease, which produces the desired result of rendering a semi-transparent paper transparent. This preparation [640] is stamped or printed on or otherwise applied to the blank to provide the transparency or window of the desired design, and it is applied to such part of the blank where the transparency is desired to appear on the face of the envelop and it may cover a larger or a lesser space according to the desired size of the transparency or window.

Since the oily preparation has a tendency to creep or "bleed" beyond the borders of the space imprinted by the stamp or die by which it is applied and so possibly stain or discolor the rest of the envelop, or give a ragged appearance to the window opening, it is preferred even where the paper might ordinarily be deemed sufficiently opaque, to apply some sort of coloring matter at least around the immediate border or the transparency. This coloring matter may be applied solid over the face of the envelop, or it may take the form of graduated tints or of being shaded, or the representation of a surrounding border, or cloud effect, as indicated at 3 in Fig. 1.

In any event the effect and object of this colored border are to give a definition to the window opening and obliterate or cover up the otherwise rough unfinished outline of the window, resulting from the encroachments of the oil or grease, or other substance beyond its desired limits.

Usually and perhaps preferably the preparations and coloring matter are applied on the opposite sides of the blank; the preparation on the inside and the coloring on the outside.

Developing out of this idea of making an unpunctured envelop with a window or transparency for the addressee's name to appear through, is the idea of changing the form or outline of this transparency to correspond with the trade mark design, or advertised object of a merchant, manufacturer, advertiser or other person, company or firm. [641]

*Emmell
May 2-06*

In Figs. 2 and 3 are shown possible modifications of this idea adapted to advertising purposes in which the transparency is made to assume the shape of some advertised article, trade mark or the like, together with certain letters or words as standing out uncolored and non-transparent in the generally opaque surrounding border.

May 2-'06.

1

Fig. 2 shows a transparency in the shape of a cucumber, the trade mark of a well known manufacturer of a great many varieties of goods. Fig 2 shows a cigar in transparency and the words "Blanco-Cigar" in non-transparency on colored opaque field.

The number of shapes this transparency may take

is almost limitless; different people might use an envelop with a window in the shape of an oyster, a cake fish, a ~~cake~~ of soap and other toilet articles, a casket, a dress-shield, a biscuit, an article of hardware and other articles of manufacture, and so on indefinitely, having due regard for the necessary size of the transparency so as not in any way to interfere with the clear showing up of the addressee's name inside. The essential feature in this connection is a window which in general outline is characteristic of a symbol of trade. By symbol of trade is meant any design such as mentioned above, or trade mark characteristic of certain goods or the product of a certain manufactory.

When the window opening is formed by the application of a grease or equivalent compound to the envelop blank, the colored or stained window is essential to the production of a window of properly defined outlines.

I thus produce a most unique and at the same time inexpensive [642] and attractive advertising medium. Every one needs envelops. These advertising envelops can be made at small expense. They can be made of any shape or size and made to fit the stationery rather than the stationary to fit the envelop. They can be used not only for mailing, but for sending out circulars and the like by messenger. The characteristically shaped window and the associated letters and colored background constitute a most striking advertisement to attract public attention, the object of all advertising.

I do not wish, however, to limit myself in the application to this idea of an envelop having a window which in outline is characteristic of a symbol of trade, to envelops made originally from non-transparent stock as above described, for I may employ a transparent stock and form the window opening by printing with, or otherwise applying opaque coloring matter to a portion of the envelop.

Generally the window opening by itself alone, and unassociated with any descriptive matter or words forming an essential feature of the trade mark would have very little significance as referring to a particular manufacturer. For instance, a window in the outline of a bolt might refer to many bolt manufacturers, or a window in the shape of a cigar unassociated with a trade name would be meaningless; but when there is associated with the window opening of characteristic or peculiar design a trade name or some word or words usually associated with or relating to the pictorial feature every one seeing the envelop is confronted with a striking advertisement of a particular brand of goods, of a particular merchant or firm. At the same time the envelop not only performs its ordinary function as a closure, but the transparent portion of the envelop [643] allows the name and address on the enclosure to show through, protects the writing thereon, and obviates the necessity for an address on the exterior of the envelop.

Having thus described my invention, what I claim and desire to secure by Letters Patent is—

1st. An advertising device comprising an envelop having a window through which the addressee's name

on an enclosure may show through, said window being in outline characteristic of some symbol of
 May 4-'05. and giving definition to

trade, a tinted or colored border surrounding said
 permanent

May 4-'05. window and advertising matter forming
 no part of the address, appearing on said

May 4-'05. and in juxtaposition with
 tinted border, and related to the outline of said
 window.

2nd. As an advertising device, an envelop having a generally opaque face except for a transparent window portion through which an addressee's name on an enclosure may show through, said window being in general outline characteristic of a symbol of

permanent
 May 4-'05. trade, and printed matter on the face of

and in juxtaposition with
 May 4-'05. the envelop related to the outline of the
 window and co-operating with said outline to indicate a particular brand of goods.

In Testimony Whereof I have hereunto set my hand in presence of two subscribing witnesses.

MAX M. COHN.

J. M. ELLIS.

S. THORP. [644]

OATH.

State of California,
 County of San Francisco,—ss.

Max M. Cohn the above-named petitioner, being sworn (or affirmed), deposes and says that he is a

citizen of United States, and resident of the City and in the County of San Francisco and State of California; that he verily believes himself to be the original, first, and sole inventor of the improvements in Envelops described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or patented in any country foreign to the United States on an application filed more than twelve month before this application, or in public use or on sale in the United States for more than two years prior to this application; and that no application for patent on said improvements has been filed by him or his representatives or assigns in any country foreign to the United States.

MAX M. COHN.

Sworn to and subscribed before me the 3d day of January, 1905.

[Notarial Seal] JAMES M. ELLIS,
Notary Public in and for the City and County of San
Francisco, State of California. [645]

Department of the Interior,
United States Patent Office,
Washington, D. C., March 20, 1905.

MAILED “ “ “

Serial No. 241,459. Paper No. 1.

Rejection.

DIV. 32.

M. M. Cohn,
c/o T. W. Fowler,
Washington, D. C.

Please find below a communication from the EX-AMINER in charge of your application.

No. 241,459, filed Jan. 17, 1905, “Envelope.”

F. I. ALLEN,

Commissioner of Patents.

The claims presented are rejected upon British patent to Watts, 7955, Apr. 22, 1895 (Paper Vessels, Boxes, Display), when taken with that to Busch, 11,876, July 4, 1896 (229-71).

The first shows that it is old to make the transparent openings in envelopes of various configurations and designs; while the Busch reference discloses applicant's specific construction so far as defined by the claims.

GEO. P. TUCKER,

Asst. in Chg.

R. C. F. [646]

Serial No. 241-459. Paper No. 2.

Amendment A.

Filed May 5, 1905.

U. S. PATENT OFFICE,

May 5, 1905.

DIVISION XXXII.

In the Matter of Application of

Max M. Cohn,

Envelope.

Filed January 17, 1905.

No. 241,459.

Commissioner of Patents.

Sir: The above entitled application is hereby amended as follows:

Claim 1, line 5, before "said" insert "and giving definition to" and same line, after "and" insert "permanent."

Claim 1, line 6, after "to" insert "and in juxtaposition with."

Claim 2, line 5, before "printed" insert "permanent" and line 6, after "related to" insert "and in juxtaposition with."

Remarks:

Reconsideration and favorable action is asked as this invention seems clearly patentable. We are not claiming an envelope with a transparent opening but we are claiming an opening of a particular kind which serves not only the function of the window of Busch but is also descriptive of some known article of trade. Thus we convert Busch's address window into a valuable advertising feature while preserving all that Busch can possibly claim for his window. We thus obtain a new result since we ob-

tain a valuable advertising advantage without detracting from the view of the addressee's name. But this alone is not sufficient and is not only what our claims call for. The point that must be kept in mind all the time is the COMBINATION of the PECULIARLY SHAPED window and the correlative permanent printed matter on the envelope explanatory of and in juxtaposition with the said opening. For instance, a cigar-shaped window has no especial [647] significance but when the word "Premo" or "Blanco" or some other suitable trade name is printed on the face of the envelope in juxtaposition with the window opening, the ENTIRE design has a special significance, for the arrangement considered as a whole presents a novel and useful way of expressing some well known name of trade-mark. In view of the foregoing we submit that upon reconsideration our claims should be allowed.

Respectfully,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [648]

Department of the Interior,

United States Patent Office,

Washington, D. C., May 25, 1905.

MAILED

" " "

Serial No. 241,459. Paper No. 3.

Rejection.

DIV. 32.

M. M. Cohn,

c/o T. W. Fowler,

Washington, D. C.

Please find below a communication from the EX-

AMINER in charge of your application.

No. 241,459, filed Jan. 17, 1905. "Envelope."

F. I. ALLEN,

Commissioner of Patents.

This action is in response to applicant's amendment filed May 5, 1905.

The claims presented are rejected upon British patent to Cohn, 14,478, June 27, 1904 (229-71) attention being directed to the oath herein and in the parent case of which this is stated to be a division. Moreover, the claims are rejected upon the art of record.

JAY F. BANCROFT,

Examiner.

R. C. F. [649]

Serial No. 241,459. Paper No. 4.
Letter.

Filed Feb. 21, 1906.

U. S. PATENT OFFICE.

FEB. 21, 1906.

DIVISION XXXII.

Room 148.

In the Matter of the Application of

M. M. Cohn,

Envelope.

Filed Jan. 17, 1905.

No. 241,459.

Washington, D. C., Feb. 21, 1906.

Commissioner of Patents,

Sir: As it is still believed that this application contains patentable subject-matter and that the claims now in the case express the invention, we respectfully ask reconsideration and final action

with a view to an appeal to the examiners-in-chief.

Respectfully,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [650]

Department of the Interior,

United States Patent Office,

Washington, D. C., March 2, 1906.

MAILED “ “ “

Serial No. 241,459. Paper No. 5.

Rejection.

DIV. 32.

M. M. Cohn,

c/o T. W. Fowler,

Washington, D. C.

Please find below a communication from the EXAMINER in charge of your application.

No. 241,459, filed Jan. 17, 1905, “Envelopes.”

F. I. ALLEN,

Commissioner of Patents.

Applicant's communication of Feb. 21, 1906, has been received. The further consideration and final action requested in such communication cannot be given until applicant has complied strictly with Rule 69. The communication referred to is in no manner responsive to the rejection given May 25, 1905.

Attention is called to the following patents not heretofore of record, which will be referred to should applicant appeal the rejected claims:

Brown, 36,393, Sept. 9, 1862 (229-71).

Callahan, 701,839, June 10, 1902 (Same class).

JAY F. BANCROFT,

Examiner. [651]

Serial No. 241,459.

Paper No. 6.

APPEAL.

Name, Max M. Cohn.

Filed, Jan. 17, 1905.

Title, Envelope.

TO EXAMINERS-IN-CHIEF.

Reason for appeal, March 2, 1906.

Examiner's statement, March 22, 1906.

Notice of hearing, Apr. 6, 1906.

Brief, Apr. 5, 1906.

Decision,

Notice of decision, Exr. reversed, Apr. 13, 1906, cls. 1
& 2 appd.

TO COMMISSIONER.

Received,

Brief,

Notice of hearing,

Decision,

Notice of decision, [652]

Serial No. 241,459. Paper No. 7.

Letter.

Filed Mar. 13, 1906.

U. S. PATENT OFFICE,

MAR. 13, 1906.

DIVISION XXXII.

In the Matter of the Application of

MAX M. COHN,

Envelopes.

Filed January 17, 1905.

No. 241,459.

Washington, D. C., March 13, 1906.

Commissioner of Patents.

Sir: Answering the examiner's letter of March 2,

1906, we beg to say that the British patent to applicant No. 14,478 of 1904 cited in the office letter of May 25, 1905, was not viewed by applicant as possessing any of the real invention claimed in this case and as entitled to serious consideration.

We really wonder that the examiner will cite such a patent for claims which are for such matter as "said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window and permanent advertising matter forming no part of the address, appearing on said tinted border, and in juxtaposition with and related to the outline of said window."

Not one of these features appear in applicant's British patent cited; and we wonder that said patent is seriously considered as a reference for our claims. If the British patent was for the same invention as that disclosed in this case, the applicant's oath would have shown this fact. As it is not for the same invention it requires no further attention from us, as it does not even remotely disclose what our claims call for, as above pointed out. [653]

As to the Brown and Callahan patents, they are not cited in rejection of our claims but only to show the state of the art. They, therefore, do not require specific answer on our part. We have thus complied with the technical requirements of Rule 69 and request that final rejection be given and our appeal be answered.

Respectfully,
MAX M. COHN,
By T. W. FOWLER,
Atty. [654]

Department of the Interior,
United States Patent Office,
Washington, D. C., April 27, 1906.

MAILED “ “ “

Serial No. 241459. Paper No. 8.

~~Rejection~~ Letter

DIV. 32.

M. M. Cohn,
C/O T. W. Fowler,
Washington, D. C.

Please find below a communication from the EX-AMINER in charge of your application.

No. 241,459, filed Jan. 17, 1905, “Envelope.”

F. I. ALLEN,

Commissioner of Patents.

Upon consideration of the application above entitled in connection with the decision of the Examiners-in-Chief, it is found that Figure 1 of the drawing must be eliminated as not being covered by the claims, such figures not showing a window having a general outline of a “symbol of trade.”

Figure 2 should likewise be eliminated for the reason that such Figure does not show any printed matter or permaneny advertising matter related, in significance, to the pickle outline of the window. It is not seen that there is any connection whatever between John Doe and the pickle, nor is it seen that the words “57 varieties” are in any way “related to” or “associated with” the pickle-shaped outline of the window.

The only printed matter or advertising matter shown on the drawing that can be said to be in any

way related to or associated with the outline of the window shown is the word "Cigar" in Figure 3.

The description should be correspondingly revised.

JAY F. BANCROFT,

Examiner. [655]

Serial No. 241,459. Paper No. 9.

Amendment B.

Filed May 2, 1906.

U. S. PATENT OFFICE.

MAY 2, 1906.

DIVISION XXXII.

In the matter of the application of

Max M. Cohn,

Envelopes.

Filed Jany 17, 1905.

No. 241,459.

Washington, D. C., May 2, 1906.

Commissioner of Patents.

Sir: The above-entitled application is hereby amended as follows:

Cancel Fig. 1 of the drawing and the description of the same in lines 12 to 15 inclusive of page 1.

Page 1, line 16, change "2 and 3" to "1 and 2."

Page 3, cancel the descriptions in lines 2 to 7 inclusive.

Page 3, line 8, change "2" to "1."

Page 3, line 10, change "3" to "2."

Remarks:

Having made the foregoing amendments we hope the examiner will send this case to issue without raising other objections, after appeal and decision. Applicant withdraws his Fig. 1 and thereby gives the

Examiner the benefit of his objections to that figure; but he declines to cancel Fig. 2 as there is no valid reason for his doing so. This figure shows an advertisement which is national in its character, and almost any child in the primary grades of our schools knows what the representation of the pickle and the words "57 varieties" means. "Heinz 57 varieties" is a trade expression well known to nearly every one, but the name "Heinz" being personal in its character, the office will object to this name appearing as an advertisement on the drawings of patent. For this reason we have substituted the [656] fictitious name "John Doe" in lieu of "Heinz"; and the examiner is in no position to say that "John Doe" is not the packer of "57 varieties of pickles, and that this name, or any other name, or symbol representing an article of trade is not properly included with a recognized descriptive design of the window opening under the recent decision of the examiners-in-chief. In original Fig. 2, the pickle-shaped window—and the examiner seems to readily recognize the shape—is representative of an article of trade; and the printed matter "John Doe" and "57 varieties" and any other descriptive phrase, as "It works while you sleep" a trade expression for Cascarets and associated with a window shaped like a cascairet, is related to or associated with the window to indicate a particular brand of goods.

We hope the examiner will take this view of the matter and save us the annoyance of further action after we have accepted his former final rejection and have appealed this case and the appeal has been sustained.

(The examiner is respectfully requested to
(change the designation "Figs. 2 and 3" on the
(drawing to "Fig. L" and "Fig. 2" respectively.

Respectfully,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [657]

Here follows formal printed letter of allowance
and printed copy of specifications and drawings of
the patent as issued. [658]

SPECIMEN ENVELOPE CANNOT BE FUR-
NISHED. [659]

Appeal No. 27,350. Paper No. 1.
Reasons of Appeal.

\$10.—RECEIVED.

FEB. 28, 1906. S.

CHIEF CLERK, U. S. Patent Office.

U. S. PATENT OFFICE,

MAR. 2, 1906.

DIVISION XXXII.

To the Commissioner of Patents.

Sir: I hereby appeal to the examiners-in-chief
from the decision of the principal examiner in the
matter of my application for letters patent for an
improvement in Envelopes, filed January 17, 1905,
serial number 241,459, which on the 25th day of May,
1905, was rejected the second time.

The following is the point of the decision on which
the appeal is taken:

For that, the examiner erred in rejecting the

claims of this application on the references and reasons of record.

Respectfully,

MAX M. COHN,
By T. W. FOWLER,
His Attorney.

Washington, D. C., Feby. 26/06. [660]

Appeal No. 27,350. Paper No. 2.
Examiner's Statement.

U. S. PATENT OFFICE.

MAR. 22, 1906.

MAILED.

Department of the Interior,
United States Patent Office,

Washington, D. C., March 22, 1906.

Before the Honorable The Examiners-in-Chief.

On Appeal.

In re Application Max. M. Cohn.

Serial No. 241,459.

Filed Jan. 17, 1905.

Envelope.

Attorney—T. W. Fowler, Washington, D. C.

EXAMINER'S STATEMENT.

The claims appealed are as follows:

1. An advertising device comprising an envelope having a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window and permanent advertising matter form-

ing no part of the address, appearing on said tinted border and related to and in juxtaposition with the outline of said window.

2. As an advertising device, an envelope having a generally opaque face except for a transparent window portion through which an addressee's name on an enclosure may show through, said window being in general outline characteristic of a symbol of trade, and permanent printed matter on the face of the envelope related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods.

These claims each stand rejected on the British patent to Cohn and Shipp, No. 14,478, June 27, 1904.

Each of these claims also stand rejected on British patent to Busch, 11,876, June 1, 1896.

The mechanical structure of applicant's envelope may be stated briefly to be an envelop having a transparent portion or window in its front surrounded by an opaque border [661] formed by the application of coloring matter. This structure is clearly disclosed by the British patent to Cohn and Shipp. The limitations in the claims to the shape or contour of the transparent portion or window, and to the advertising or printed matter placed upon the colored border cannot add any patentability to the claim. After an envelope has been provided with a transparent window surrounded with an opaque colored border, it is within the province of any mechanic or artisan to charge the shape or contour of the transparent window to suit his own taste, without inven-

tion. The patent to Cohn and Shipp shows a variety of shapes for the window. The printed matter upon the envelop likewise can add no patentability to the structure. This doctrine is well settled in the following decisions: *Ex parte Lee*, 18, O. G., 624, and *Ex parte Mosler*, 118, O. G., 590.

Attention is called to the fact that applicant in his application oath swears that he has no foreign patents. Applicant's attorney in his argument states that the British patent to Cohn and Shipp is Cohn's patent. It would appear that, until applicant establishes such fact by proper oath, the said patent is a valid reference for the claims.

The British patent to Busch discloses an envelope having in its front portion a transparent window surrounded by an opaque border preferably made by printing with opaque coloring matter. This is applicant's exact structure aside from the particular shape or design of the window and the advertising design or the printed or advertising matter cannot add patentability to a structure otherwise old.

It is submitted that the claims are not patentable.

Very respectfully,

JAY F. BANCROFT,

Examiner Division 32. [662]